S. Hrg. 98-936

UNRESOLVED CLAIMS ON THE WHITE EARTH INDIAN RESERVATION

HEARING

BEFORE THE

SELECT COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

NINETY-EIGHTH CONGRESS

FIRST SESSION

ON

S. 885

TO SETTLE UNRESOLVED CLAIMS RELATING TO CERTAIN ALLOTTED INDIAN LANDS ON THE WHITE EARTH INDIAN RESERVATION, TO REMOVE CLOUDS FROM THE TITLES TO CERTAIN LANDS, AND FOR OTHER PURPOSES

NOVEMBER 17, 1983
WASHINGTON, DC

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UNRESOLVED CLAIMS ON THE WHITE EARTH INDIAN RESERVATION

NOVEMBER 17, 1983

U.S. SENATE,
SELECT COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The committee met, pursuant to notice, in room 124, Dirksen Senate Office Building, Hon. Mark Andrews (chairman of the committee) presiding.

Present: Senators Andrews, Durenberger, and Boschwitz.

Staff present: Paul Alexander, staff director; Virginia Boylan, staff attorney; Maria Mendoza, staff attorney; and Dan Meyer, legislative assistant to Senator Boschwitz.

Senator ANDREWS. This hearing concerns S. 885, a bill to settle unresolved claims relating to certain allotted Indian lands on the White Earth Indian Reservation and, therefore, remove the cloud from the titles to the lands affected by these unresolved claims. The hearing will explore S. 885, as well as any other legislation brought forth to legislatively bring these claims to a solution.

For the past several Congresses, our committee has been in the business of helping to legislatively resolve claims. Statutes, as you know, have been enacted concerning claims in Maine, Rhode Island, and Connecticut. There are ongoing negotiations in South Carolina, Louisiana, New York, and Washington concerning other claims. We are also working on S. 1151, a bill to settle old age assistance claims in several Midwestern and Western States.

One of the things, quite frankly, that this committee looks for in any proposed settlement is that it is, in fact, a settlement. In the cases I have just mentioned, all of the parties including the tribal, State, and Federal Governments, have compromised to reach solutions that were not anyone's first choice but solutions that everyone could live with, and I think that is important. I hope that our hearing this morning can help bring about such a permanent solution to this dispute.

At this point, without objection, I will place a copy of S. 885 in the hearing record.

[The bill follows:]

II

98TH CONGRESS
1ST SESSION

S. 885

To settle unresolved claims relating to certain allotted Indian lands on the White Earth Indian Reservation, to remove clouds from the titles to certain lands, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 22 (legislative day, MARCH 21), 1983

Mr. DURENBERGER (for himself and Mr. BOSCHWITZ) introduced the following bill; which was read twice and referred to the Select Committee on Indian Affairs

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A BILL

To settle unresolved claims relating to certain allotted Indian lands on the White Earth Indian Reservation, to remove clouds from the titles to certain lands, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "White Earth Reservation Land Settlement Act of 1982".

SECTION 1. For the purposes of this Act, the following terms shall have the indicated meanings:

(a) "Allotment" shall refer to an allotment granted, pursuant to the Act of January 14, 1889, and the Act of February 8, 1887 to Chippewa Indians of the White Earth Reservation, Minnesota.

(b) "Allottee" shall refer to the recipient of an allotment.

(c) "Full blood" shall refer to a Chippewa Indian of the White Earth Reservation, Minnesota, who was designated as a full blood Indian on the toll approved by the United States District Court for the District of Minnesota on October 1, 1920, or who was so designated by a decree of a court of competent jurisdiction; it shall also refer to the biological child of two full blood parents so designated on the roll or of one full blood parent so designated on the roll and one parent who was a full blood Indian enrolled in any other federally recognized Indian tribe, bank, or community.

(d) "Inherited" shall mean received as a result of testate or intestate succession, which succession shall be determined by the Secretary of the Interior or his authorized representative.

(e) "Mixed blood" shall refer to a Chippewa Indian of the White Earth Reservation, Minnesota, who was designated as a mixed blood Indian on the roll approved by the United States District Court of Minnesota on October 1, 1920, unless designated a full blood by decree of a court of competent jurisdiction; it shall also refer to all direct descendants of individuals who were listed on said roll but who are not full bloods under the definition in subsection (c) of this section and who were not enrolled in another federally recognized Indian tribe, band or community.

(f) "Tax forfeited" shall refer to allotments which, pursuant to State law, were declared forfeited for nonpayment of real property taxes and purportedly transferred directly to the State of Minnesota or to private parties or governmental entities.

(g) "Majority" shall mean the age of twenty-one years or older.

(h) "Secretary" shall refer to the Secretary of the Interior or his authorized representative.

(i) "Trust period" shall mean the period during which the United States held an allotment in trust for the allottee or the allotee's heirs. For the purposes of this Act, the Executive Order of May 5, 1927, Executive Order Numbered 5768 of December 10, 1931, and Executive Order Numbered 5953 of November 23, 1932, shall be deemed to have extended trust periods on all allotments or interests therein the trust periods for which would otherwise have expired in 1927, 1932, or 1933, notwithstanding the issuance of any fee patents, provided such allotments were not specifically excepted from the executive orders, and provided that such allotments or interests therein were not sold or mortgaged by adult mixed bloods, by non-Indians, or with the approval of the

Secretary, or were sold or mortgaged but were the subject of litigation in Federal court where the outcome of such litigation was other than vacating or voiding such sale or mortgage.

(j) "Interest" shall mean a fractional holding, less than the whole, held in an allotment by an heir of an allottee, in common with other heirs.

(k) "Adult" shall mean having attained the age of majority.

Sec. 2. (a) The provisions of this Act shall apply to the following allotments:

(1) Allotments which were never sold or mortgaged by the allottees and were tax forfeited during the trust period;

(2) Allotments which were sold or mortgaged during the trust period, without the approval of the Secretary, by the allottees prior to having attained majority, and were never again sold or mortgaged either by the allottees upon their having attained majority or by adult mixed blood heirs of the allottees;

(3) Allotments which were sold or mortgaged during the trust period by full blood allottees without the approval of the Secretary, and were never again the subject of a sale or mortgage by adult mixed blood heirs of the allottee; and

(4) Allotments which were never sold or mortgaged by the allottee, but which subsequent to the death of the allottee, purportedly were sold or mortgaged, during the trust period, by administrators operating under authority from State courts.

(b) The provisions of this Act shall also apply to the following allotments or interests in allotments:

(1) Allotments or interests therein which were inherited by full or mixed bloods who never sold or mortgaged their interests or by Indians enrolled in other federally recognized Indian tribes, bands, or communities, where the allotments or interests were tax forfeited during the trust period;

(2) Allotments or interests which were inherited by minor mixed bloods and were sold or mortgaged during the trust period without the approval of the Secretary prior to the minor mixed bloods having attained majority but were never again sold or mortgaged by them or their heirs upon having attained majority;

(3) Allotments or interests which were inherited by full bloods or by Indians enrolled in other federally recognized Indian tribes, bands, or communities, who sold or mortgaged such interests during the trust period without the approval of the Secretary;

(4) Allotments or interests which were inherited by full or mixed bloods who never sold or mortgaged their interests, but which, subsequent to the deaths of such heirs, were sold or mortgaged during the trust period by administrators operating under authority from State courts;

(5) Allotments or interests which were inherited by full or mixed bloods for whom guardians were appointed by State courts, which guardians sold or mortgaged the allotments or interests during the trust period without the approval of the Secretary;

(6) Interests which were inherited by full or mixed bloods who never sold or mortgaged their interests during the trust period, even though other interests in the same allotment were properly sold by adult mixed bloods, where the land comprising the allotment has been claimed in full by other parties adversely to the full or mixed bloods who never sold or mortgaged their interests.

(7) Allotments or interests which were inherited by full or mixed bloods or by Indians enrolled in other federally recognized Indian tribes, bands, or communities which were never sold or mortgaged during the trust period but which were purportedly distributed by State court probate proceedings to others.

(c) This section shall not apply to any allotment the sale or mortgage of which was the subject of litigation in Federal court, where the outcome of such litigation was other than vacating and voiding such sale of mortgage, nor shall it apply to any allotment which was tax forfeited subsequent to the date on which the tax exemption was declared by a Federal court to have expired, nor shall it apply to any allotment which was sold, mortgaged, or tax forfeited after the expiration of the trust period.

SEC. 3. Nothing in this Act shall be taken as calling into question the validity of the transactions described in section 2(c), and those transactions hereby are ratified and confirmed and are declared to be outside the scope of sections 4, 5, 6, and 7 of this Act. No title to lands on the White Earth Reservation shall be rendered unmarketable solely by virtue of the fact that a State court probate proceeding purported to determine the heirs or heir of an allottee. As to any allotment which was granted to an allottee who had died prior to the selection of the allotment, the granting of such allotment is hereby ratified and confirmed, and shall be of the same effect as if the allotment had been selected by the allottee before the allottee's death.

SEC. 4. The Secretary is hereby authorized to and shall investigate all White Earth allotments and shall determine which allotments fall within any of the provisions of sections

2(a) and 2(b). As to all such allotments determined to be outside the scope of sections 2(a) and 2(b), the Secretary shall prepare a list of such allotments, including allotment number, land description, and allottee's name, in English and Ojibway where appropriate. Such list shall be published in a newspaper of general circulation in Mahnomen County, Minnesota, in Becker County, Minnesota, and in Clearwater County, Minnesota, in three newspapers of general circulation in the region of the White Earth Reservation, in two newspapers of general circulation in metropolitan Minneapolis-St. Paul, and in ten newspapers of general circulation in major metropolitan areas in the United States, the choice of metropolitan areas to be in the discretion of the Secretary. Any person adversely affected by the Secretary's determination may appeal such determination within six months of issuance of the notice provided for herein.

SEC. 5. (a) As to any allotment which the Secretary determines falls within any of the categories of sections 2(a) and 2(b), the tax forfeiture, sale, mortgage or other taking as described therein is hereby ratified and confirmed. Compensation for loss of such allotments or interests therein resulting from this ratification and confirmation shall be determined and processed according to the provisions of this section, provided that no compensation shall be granted to full or mixed bloods described in sections 2(b) (1)–(7) who were granted allotments or interests pursuant to State court probate proceedings, where it has been or is determined by the Secretary that such mixed or full bloods were not entitled to inherit the allotments or interests.

(b) Compensation shall be the fair market value of the land or interest therein as of the date of tax forfeiture, sale, or mortgage, or other taking, less any compensation actually received, plus simple interest at the rate of 6 per centum per annum from that date to the effective date of this Act. For the purpose of this section, the date of taking applicable to interests described in section 2(b)(6) shall be the last date on which any interest in the subject allotment was transferred by document of record by an adult mixed blood heir of the allottee.

(c) The Secretary shall provide written notice of his compensation determination to the allottee or heir entitled thereto. Such notice shall describe the basis for his determination, the applicable time limits for appeal of the determination, and the process whereby such compensation will be distributed. The Secretary shall proceed to make such heirship determinations as may be necessary to provide the notice required by this section; provided, however, that if the Secretary determines that no compensation is due, the Secretary shall give written notice only to those allottees or heirs whose identity and address can be readily ascertained without resort to heirship determinations, and if no person can be thus readily ascertained, then such notice shall be given by publication.

(d) The Secretary's determination shall take effect and be final and conclusive six months from the issuance of notice as aforesaid, provided that an appeal may be filed during such time in accordance with applicable regulations, and will stay the effective date of the determination.

(e) Once a compensation determination has become effective according to the provisions of section 5(c) of this Act, the Secretary shall distribute the appropriate amounts. The Secretary shall make a diligent effort to locate each recipient; however, if, after two years from the effective date of a determination, a recipient cannot be located, the Secretary may, in his discretion, declare the amount owing to such recipient forfeited, and may deposit such amount to the credit of the White Earth Band of Chippewa Indians.

SEC. 6. No action may be brought in any court contesting the validity of any tax forfeiture, sale, mortgage, or other taking as described in sections 2(a) and 2(b) of this Act, except that an action may be brought against the United States to contest the final decision on any administrative appeal made under the provisions of section 4 and section 5 of this Act within one year of the final decision on such appeal. Any such action may be brought only by a party to such an appeal, and in the United States District Court for the District of Minnesota.

SEC. 7. The Secretary shall adopt regulations implementing the provisions of this Act within eighteen months of the effective date of the Act.

SEC. 8. There is hereby authorized to be appropriated an amount, not to exceed $2,000,000 per year, for administration of this Act and for payment of compensation hereunder.

Senator **Andrews**. Our first witness this morning is my good neighbor and colleague, Dave Durenberger. Senator Durenberger, welcome to the committee. We are looking forward to your statement.

STATEMENT OF DAVID F. DURENBERGER, A U.S. SENATOR FROM THE STATE OF MINNESOTA

Senator **Durenberger**. Thank you very much, Mr. Chairman.

I do not know if you got to the Op Ed page of the Washington Post this morning, but I referred to you as "my distinguished colleague from upper Florida."

Senator **Andrews**. You mean I ended up being in upper Florida?

Senator **Durenberger**. Yes. You are going to change the name of North Dakota to something warmer.

Senator **Andrews**. Well, we always figure that 40° below eliminates the riff-raff.

We are sort of proud of that. We would not want it to be too easy a place to go.

Senator **Durenberger**. I see they sent you to Washington.

Mr. Chairman, I compliment you on that opening statement. I am sure you have had to put a great deal of what has come before you in the form of legislation into that kind of perspective. I commend you for holding the hearing today on an issue that is of great concern to many Minnesotans. Particularly, I am grateful that you are providing an opportunity for dialog between all of the interested parties—the State of Minnesota, the Federal Government, the White Earth Band of the Chippewa Nation, the area landowners, local community officials, and other interested individuals.

I would like to recognize Attorney General "Skip" Humphrey especially for coming to Washington to participate in this hearing. His efforts to resolve this problem, and those of his most respected predecessor, Attorney General Warren Spannus and their staffs, have been tireless and appreciated by all of the interested parties.

I would also like to thank all of the other witnesses who have traveled to Washington, most of them at significant personal expense, to present testimony today and to participate in this dialog. I think their presence here at some substantial sacrifice is evidence of the personal importance of this issue.

When I introduced this legislation in the 97th Congress and then reintroduced it last March, it was my hope that a hearing would be scheduled as soon as possible in order to start the process that you indicated always has to take place, of resolving conflict which clearly exists in this kind of an issue. This is a complex issue; it is one that necessitates, above all, communication between and among all of the parties. S. 885 and this hearing were designed simply to commence that discussion.

The objective of S. 885 is threefold: to clear the impediments to title that prevent current landowners from transferring title to their property by sale, mortgage, or will; to ensure rapid payment of all meritorious claims against existing landowners; and to accomplish both of these objectives without the erosion of each side's equities that would be produced by protracted litigation.

The bill is complex and technical, and one that is not easily summarized in a few lines. Generally, however, the cogent points are as follows: Present landholders are granted clear title to the land they now possess. This portion of the statute is, in effect, a legislative quiet title action. Compensation is granted to all adverse claimants at a level representing the fair market value of the land, or an interest in land at the date of the contested transfer, less compensation actually received plus simple interest at the rate of 6 percent per year.

Compensation will go to the heirs of the original claimants. In any case where an heir cannot be located within 2 years of a compensation award, the heir's claim is legislatively extinguished and the funds comprising that claim are remitted to the White Earth Band of the Chippewa Nation.

Detailed definitions are provided of the various claim categories, and contain provisions regarding the determination, location, and notification of heirs, as well as an appeals process designed to ensure rapid resolution of all claims.

Mr. Chairman, I have received quite a number of phone calls and letters from individuals who are concerned with the present language. I want to assure you, as you have assured the people who are here today, that I view this legislation as a starting point and I am amicable personally, as the author of the legislation, to amending it in order to obtain the fairest solution for all involved.

My primary request is that the original allottees and their heirs, the landowners, the White Earth Band, and all other parties who have a stake in this legislation be afforded the opportunity to publicly address their concerns. Today's hearing is precisely the type of forum to start to air those concerns. I would, however, ask that all concerned parties work with one another throughout the legislative process, as well as with my office, with Senator Boschwitz office, and your committee.

I think it is imperative, Mr. Chairman, that we make as our objective the avoidance of costly and protracted litigation which is obviously a personal detriment to all of the individuals involved, and that we resolve the issues in dispute and settle the White Earth Reservation land claims as soon as is humanly possible. I thank you, Mr. Chairman, for beginning that process.

Senator **Andrews**. Well, thank you, Senator, for an excellent statement and for bringing your concern and the concern of the State of Minnesota to the attention of the committee.

Without objection, we will insert at this point the statement by Senator Boschwitz, followed by a statement of Congressman Stangeland, who as I understand, has sponsored companion legislation in the House.

Senator **Durenberger**. Yes.

[The statements follow. Testimony resumes on p. 25.]

STATEMENT BY SENATOR RUDY BOSCHWITZ
BEFORE THE SENATE COMMITTEE ON INDIAN AFFAIRS
NOVEMBER 17, 1983

MR. CHAIRMAN, I WISH TO BEGIN BY THANKING THE CHAIRMAN, SENATOR ANDREWS, AND THE OTHER MEMBERS OF THIS COMMITTEE FOR SCHEDULING THIS HEARING. IT WAS SOME TIME AGO THAT I FIRST CONTACTED THE CHAIRMAN ABOUT THE POSSIBILITY OF HEARINGS AND I AM EXTREMELY GRATEFUL THAT THEY HAVE COME ABOUT. I ALSO WANT TO THANK OUR COLLEAGUES IN THE HOUSE WHO SCHEDULED A SIMILAR HEARING YESTERDAY. HAVING THESE HEARINGS ON CONSECUTIVE DAYS WAS VERY CONVENIENT FOR OUR CONSTITUENTS WHO CAME OUT FROM MINNESOTA.

MR. CHAIRMAN, THE LAND CLAIMS ISSUE AT WHITE EARTH IS EXTREMELY COMPLEX AND THAT COMPLEXITY STEMS FROM THE ACTIONS OF CONGRESS AND THE EXECUTIVE BRANCH OVER THE LAST 100 YEARS OR SO. BECAUSE WE ARE RESPONSIBLE FOR THESE PROBLEMS, ALONG WITH OUR PREDECESSORS, WE ALSO MUST TAKE RESPONSIBILITY FOR FINDING A SOLUTION.

I AM SURE OTHERS TESTIFYING TODAY WILL GIVE A MORE DETAILED HISTORY OF THE PROBLEM. VERY BRIEFLY, HOWEVER, I CAN SAY THAT MUCH OF THE PROBLEM STEMS FROM CONFLICTING CONGRESSIONAL ACTION GOING BACK TO THE NELSON ACT OF 1889 AND THE CLAPP ACT OF 1906. THE LATTER PROVIDED THAT ADULT MIXED BLOOD WHITE EARTH INDIANS SHOULD HAVE THEIR ALLOTMENTS IN FEE SIMPLE RATHER THAN HELD IN TRUST. SUBSEQUENT COURT

DECISIONS, INCLUDING THE ZAY ZAH DECISION, HAVE HELD THAT THE BREAKING OF THE TRUST ARRANGEMENT, WITHOUT COMPENSATION, WAS IMPROPER AND THEREFORE ILLEGAL.

THE SITUATION IS FURTHER COMPLICATED BY OF THE VARIOUS TYPES OF CLAIMS INCLUDING CLAIMS DUE TO IMPROPER TAX FORFEITURE, AND UNAPPROVED TRUST LAND SALES -- SALES BY UNDERAGED ALLOTTEES WITHOUT THE APPROVAL OF THE DEPARTMENT OF THE INTERIOR.

RECOGNIZING THAT THE ONLY REALISTIC SOLUTION TO THIS PROBLEM IS CONGRESSIONAL ACTION, CONGRESSMAN STANGELAND, SENATOR DURENBERGER AND I INTRODUCED LEGISLATION TO SETTLE THIS PROBLEM. WE INTRODUCED THIS LEGISLATION BASED ON TWO BASIC PREMISES. FIRST, NO PRIVATE LANDOWNER SHOULD LOSE HIS PROPERTY OR CONTINUE TO HAVE CLOUDED TITLE; AND SECOND, COMPENSATION SHOULD BE PROVIDED FOR THE HEIRS WHO LOST THEIR RIGHT TO CHALLENGE TITLE TO THE DISPUTED LANDS BY THIS LEGISLATION.

WE WERE HOPEFUL THAT INTRODUCTION OF THIS LEGISLATION WOULD SERVE AS A CATALYST TO GET INTERESTED PARTIES TOGETHER OR, AT THE VERY LEAST, TO HAVE ALTERNATIVES OFFERED. TO DATE THIS HAS NOT HAPPENED. DESPITE LONG-STANDING REQUESTS WE HAVE NOT RECEIVED THE OPINIONS OF THE DEPARTMENT OF THE INTERIOR ON THESE BILLS. I DO NOT SAY THIS TO CAST BLAME OR POINT FINGERS ONLY TO POINT OUT THAT WE HAVE NOT BEEN VERY SUCCESSFUL IN MOVING TOWARDS A RESOLUTION. THIS IS NOT FOR LACK OF INTEREST, HOWEVER. AS THIS COMMITTEE KNOWS, VARIOUS INDIVIDUALS, DELEGATIONS AND GOVERNMENT OFFICIALS HAVE COME OUT HERE FROM MINNESOTA TO DISCUSS THIS ISSUE. BUT PROGRESS HAS BEEN SLOW -- A SOURCE OF FRUSTRATION FOR THE PEOPLE INVOLVED.

HOWEVER, I DO BELIEVE THESE HEARINGS CAN BE A NEW CATALYST. I AM VERY PLEASED THAT SEEMINGLY ALL THE INTERESTED PARTIES FROM THE WHITE EARTH TRIBE, TO THE LOCAL LANDOWNERS AND COUNTY, STATE AND FEDERAL OFFICIALS ARE PARTICIPATING.

MY STAFF AND I HAVE PARTICIPATED IN MEETINGS WITH REPRESENTATIVES OF ALL OF THESE INTERESTS. MOST RECENTLY A MEETING TOOK PLACE IN MY OFFICE BETWEEN A REPRESENTATIVE OF THE TRIBE WITH STAFF OF ARLAN, DAVE AND I. I AM ENCOURAGED BY THE INTEREST AND WILL CONTINUE TO DO ALL I CAN TO RESOLVE THIS ISSUE. AND I AM HOPEFUL WITH THIS COMMITTEE'S HELP AND THE HELP OF ALL THE PEOPLE IN THIS ROOM FASTER PROGRESS TOWARDS A RESOLUTION CAN BE MADE.

THANK YOU.

PREPARED STATEMENT OF
THE HONORABLE ARLAN STANGELAND OF MINNESOTA

THE WHITE EARTH LAND CLAIMS ARE A VERY SERIOUS PROBLEM IN MY CONGRESSIONAL DISTRICT IN NORTHWESTERN MINNESOTA. INTERIOR DEPARTMENT ESTIMATES SHOW THE CLAIMS INVOLVE NEARLY 1,000 TRACTS OF LAND WHICH ENCOMPASS APPROXIMATELY 100,000 ACRES.

THE ABSENCE OF A LEGISLATIVE RESOLUTION OF THE PROBLEM MEANS THAT A VAST NUMBER OF LANDOWNERS IN MY DISTRICT ARE PLAGUED WITH "CLOUDED" TITLES WHICH ARE NOT MARKETABLE AND FOR WHICH TITLE INSURANCE CANNOT BE OBTAINED. THE CONSEQUENCES OF THESE CLOUDED TITLES TRANSLATE INTO VERY VIVID AND PAINFUL ECONOMIC CIRCUMSTANCES FOR THE UNFORTUNATE INDIVIDUALS WHO ARE AFFECTED. RETIREES WHO HAVE PLANNED FOR MANY YEARS TO SELL THEIR PROPERTY AND RELOCATE ARE NOW PREVENTED FROM DOING SO. FINANCIALLY-AILING FARMERS WHO DESPARATELY NEED OPERATING CAPITAL TO STAY IN BUSINESS ARE UNABLE TO USE THEIR LAND AS COLLATERAL WHEN SEEKING CREDIT TO PLANT THEIR CROPS. OTHER LANDOWNERS, RESORTERS, AND SMALL BUSINESS OWNERS HAVE BEEN FACED WITH DECLINING PROPERTY VALUES WHICH HOLD FURTHER GRAVE IMPLICATIONS FOR THE AREA'S ECONOMY.

WE MUST NOT FORGET A LESS VISIBLE GROUP THAT IS ALSO ADVERSELY AFFECTED BY THE FAILURE TO COME TO GRIPS WITH THIS SERIOUS PROBLEM--THE ORIGINAL INDIAN ALLOTTEES AND THEIR HEIRS-- THE ONLY REASON ALLOTTEES AND HEIRS ARE LESS VISIBLE AND LESS INVOLVED IN THIS ISSUE IS BECAUSE, IN MOST CASES, THEY HAVE NO IDEA THEY ARE AFFECTED BY THE EXISTING CLAIMS. NEVERTHELESS, I HAVE ALWAYS MAINTAINED THAT THE LEGITIMATE CLAIMS OF THIS GROUP must be fairly and equitably satisfied in any final resolution of this complex and frustrating issue.

Unlike other Indian land claims settlements which have been negotiated in various regions of the country and ultimately approved by the Congress, the negotiating party in the White Earth claims--presumably the leadership of the White Earth band--does not have legal interest in the tracts of land in question. The individual allottees or their heirs are the injured party in those instances when land was improperly acquired or fair market value was not received. But it is clear that the White Earth band does have a strong political interest in any settlement which is proposed and I have been approached by the White Earth tribal leadership on numerous occasions when they have suggested that Federal, State, or County-owned land be provided the tribe, in addition to any settlement to reimburse the allottees or heirs.

I am not an expert in Indian law and am unaware of any precedents which may exist for land claims settlements that would award the tribe for wrongs suffered by specific individuals who can be identified. In addition, I would be concerned about any constitutional questions that might be raised if no effort was made to reimburse the allottees or their heirs, and instead the settlement was with the tribe only.

NEVERTHELESS, I WOULD BE EAGER TO CONSIDER, AND ALSO HAVE THIS COMMITTEE CONSIDER, ANY PROPOSAL THAT THE WHITE EARTH LEADERSHIP MAY WISH TO OFFER IN THIS REGARD. I HAVE EVEN OFFERED MY ASSISTANCE IN HELPING THE TRIBE DRAFT, IN LEGISLATIVE FORM, WHATEVER PROPOSAL THEY MAY WISH TO OFFER. I HAVE ALSO TRIED, ON SEVERAL OCCASIONS, TO GET TRIBAL REPRESENTATIVES AND LANDOWNERS TO SIT DOWN TOGETHER IN HOPES OF OPENING UP THE DIALOGUE ON THE RESERVATION AND MOVING US CLOSER TOWARD A NEGOTIATED LEGISLATIVE PROPOSAL THAT EVERYONE COULD SUPPORT. UNFORTUNATELY, NONE OF THESE EFFORTS HAVE THUS FAR RESULTED IN SUBSTANTIAL PROGRESS.

I HAVE INTRODUCED LEGISLATION NOW PENDING BEFORE THE HOUSE INTERIOR AND INSULAR AFFAIRS COMMITTEE, H.R. 2246, WHICH I BELIEVE OFFERS A REASONABLE STARTING POINT IN RESOLVING THE WHITE EARTH INDIAN LAND CLAIMS.

I AM HOPEFUL THAT THIS HEARING WILL SERVE TO FOCUS THIS COMMITTEE'S ATTENTION ON THE SPECIFIC CATEGORIES OF CLAIMS WHICH EXIST ON WHITE EARTH AND ALSO ELICIT CONCRETE PROPOSALS FROM THE WHITE EARTH LEADERSHIP, THE AFFECTED LANDOWNERS, AND THE MEMBERS OF THIS COMMITTEE TO FINALLY RESOLVE THIS ISSUE ONCE AND FOR ALL.

BACKGROUND

THROUGH A SERIES OF TREATIES CULMINATING IN 1867, THE UNITED STATES AGREED TO RESERVE 825,000 ACRES OF LAND IN MAHNOMEN, BECKER, AND CLEARWATER COUNTIES IN MINNESOTA FOR THE USE AND

BENEFIT OF THE CHIPPEWA INDIANS. IN 1889, BY WAY OF THE NELSON ACT (25 STAT. 642), CONGRESS DIRECTED THE SECRETARY OF THE INTERIOR TO DIVIDE UP THIS LAND AND PROVIDE A PARCEL TO EACH LIVING INDIAN. IN ACCORDANCE WITH THE TERMS OF THE GENERAL ALLOTMENT ACT OF 1887 (24 STAT. 389), EACH TRUST PATENT ISSUED TO AN INDIVIDUAL INDIAN GUARANTEED THAT THE U.S. WOULD HOLD TITLE TO THE LAND IN TRUST FOR THE INDIAN OR HIS HEIRS FOR A PERIOD OF 25 YEARS. DURING THIS 25 YEAR TRUST PERIOD, NO TAXES COULD BE IMPOSED AND NO CONVEYANCE OF THE LAND WOULD BE VALID WITHOUT THE APPROVAL OF THE SECRETARY OF THE INTERIOR. EXECUTIVE ORDERS SIGNED IN 1927, 1932, AND 1933, EXTENDED THE INITIAL 25-YEAR TRUST PERIOD FOR WHITE EARTH ALLOTMENTS UNTIL PASSAGE OF THE INDIAN REORGANIZATION ACT IN 1934 (48 STAT. 984) WHICH EXTENDED INDEFINITELY ALL TRUST PERIODS THEN IN EXISTENCE.

A SERIOUSLY COMPLICATING FACTOR IN THE HISTORY OF WHITE EARTH ALLOTMENTS, WHICH ALSO MAKES THEM UNIQUE FROM OTHER INDIAN LAND CLAIMS, IS A DIRECT RESULT OF THE PASSAGE OF THE CLAPP AMENDMENT OF 1906 (CH. 3504, 34 STAT. 353). THE CLAPP AMENDMENT PURPORTED TO PROVIDE THAT ADULT MIXED BLOOD WHITE EARTH CHIPPEWAS TOOK THEIR ALLOTMENTS IN FEE SIMPLE RATHER THAN SUBJECT TO ANY TRUST AND, THUS, APPARENTLY TERMINATED THE 25-YEAR TRUST STATUS OF THESE MIXED BLOOD ALLOTTEES. THEREAFTER, THE INTERIOR DEPARTMENT BEGAN ISSUING "FEE PATENTS" TO THE MIXED BLOOD ALLOTTEES EVEN THOUGH THE 25-YEAR TRUST PERIOD HAD NOT EXPIRED.

IN 1977, THE MINNESOTA SUPREME COURT HELD IN THE CASE STATE OF MINNESOTA V. ZAY ZAH, 259 N.W. 2D. 580 (1977), THAT THE AMENDMENT DID NOT TERMINATE THE TRUST AND THAT FORFEITURES UNDER THE CLAPP AMENDMENT FOR FAILURE TO PAY TAXES WERE INAPPROPRIATE. ESSENTIALLY, ZAY ZAH AND OTHER JUDICIAL DECISIONS ON THE CLAPP AMENDMENT HAVE HELD THAT THE ISSUANCE OF TRUST PATENTS UNDER THE GENERAL ALLOTMENT ACT OF 1887 CREATED VESTED RIGHTS WHICH THE CONGRESS COULD NOT UNILATERALLY ABROGATE. AMONG THE VESTED RIGHTS NOT TERMINATED BY THE CLAPP AMENDMENT WERE: (1) CONTINUANCE OF THE TRUST RELATIONSHIP, (2) IMMUNITY FROM TAXATION FOR THE ORIGINAL 25-YEAR PERIOD PLUS EXTENSIONS, UNLESS THE ADULT MIXED BLOOD INDIAN OR HEIRS TOOK AFFIRMATIVE ACTION SHOWING A DESIRE TO TERMINATE THE TRUST--SUCH AS SELLING OR MORTGAGING THE LAND, AND (3) U.S. INTERIOR DEPARTMENT JURISDICTION AND RESPONSIBILITY, NOT STATE OR LOCAL PROBATE COURTS, IN DETERMINING THE HEIRS OF DECEASED WHITE EARTH CHIPPEWAS AND IN DISTRIBUTING THEIR TRUST ESTATES.

H.R. 2246

WHILE THERE ARE A NUMBER OF WAYS THAT THE NEARLY 1,000 INDIAN LAND CLAIMS ON WHITE EARTH MIGHT BE CATEGORIZED, CLEARLY THE LION'S SHARE OF CLAIMS FALL UNDER THE THREE BROAD CATEGORIES OF (1) MINOR SALES NOT APPROVED BY THE SECRETARY OF INTERIOR, (2) IMPROPERLY TAX FORFEITED LANDS, AND (3)IMPROPER PROBATES.

MY BILL, H.R. 2246 -- WHICH IS VIRTUALLY IDENTICAL TO SENATOR DURENBERGER'S AND SENATOR BOSCHWITZ'S BILL, S. 885 -- WOULD ADDRESS ALL OF THE CLAIMS IDENTIFIED IN THE LEGISLATION IN THE FOLLOWING MANNER.

FIRST OF ALL, THE SECRETARY OF THE INTERIOR WOULD HAVE TO PERSONALLY NOTIFY BY MAIL ALL KNOWN CLAIMANTS THAT ARE ASCERTAINABLE THROUGH A REASONABLE SEARCH. THE SECRETARY WOULD FURTHER BE REQUIRED TO EXERCISE AN EXHAUSTIVE SEARCH THROUGH WHITE EARTH AREA NEWSPAPERS, RADIO, TELEVISION, BROCHURES, PAMPHLETS, AND OTHER VEHICLES TO SERVE NOTICE TO PROSPECTIVE CLAIMANTS WHO MIGHT BE ELIGIBLE FOR AN AWARD.

COMPENSATION FOR THOSE PROSPECTIVE CLAIMANTS DEEMED ELIGIBLE FOR AN AWARD WOULD BE BASED UPON THE FAIR MARKET VALUE OF THE CLAIMANT'S INTEREST IN THE LAND, LESS ANY AMOUNT RECEIVED BY THE ORIGINAL ALLOTTEE OR HEIR INVOLVED IN THE DISPUTED ACTION, PLUS 5 PERCENT SIMPLE INTEREST FROM THE DATE OF THE DISPUTED ACTION UNTIL THE FIRST DAY OF THE MONTH FOLLOWING THE MONTH IN WHICH THE AMOUNT TO BE AWARDED IS CERTIFIED FOR PAYMENT. WHILE ADMITTEDLY THE 5 PERCENT SIMPLE INTEREST RATE WAS ARBITRARILY CHOSEN, I WOULD BE MORE THAN HAPPY TO ENTERTAIN ANY INTEREST FORMULA PROPOSALS FROM THE COMMITTEE OR ELSEWHERE WHICH COULD BE SHOWN TO BE MORE EQUITABLE.

FINALLY, FOR ADMINISTRATIVE PURPOSES, A 2-YEAR TIME LIMIT FOR CLAIMS TO BE SUBMITTED IS PROPOSED IN H.R. 2246, ALONG WITH A

STIPULATION WHICH PREVENTS THE AWARDING OF ANY INDIVIDUAL CLAIMS AMOUNTING TO LESS THAN $50. THOSE CLAIMS LESS THAN $50 AND THOSE FOR WHICH CLAIMS WERE NOT SUBMITTED WITHIN THE 2 YEAR DEADLINE WOULD BE POOLED TOGETHER AND AWARDED TO THE WHITE EARTH BAND FOR THE GENERAL BENEFIT OF TRIBAL MEMBERS.

THE NET EFFECT OF H.R. 2246 WOULD BE TO OFFER THOSE INDIVIDUAL ALLOTTEES AND THEIR HEIRS WHO SUFFERED INJURY DUE RECOMPENSE FOR THE LOSS SUFFERED, WHILE AT THE SAME TIME CLEARING THE TITLE OF ANY CLOUDS OR OTHER TITLE DEFECTS OF THOSE LANDOWNERS WHO PURCHASED THEIR LAND IN GOOD FAITH AND HAD NO WAY OF KNOWING THERE WOULD EVER BE A PROBLEM WITH THE PROPERTY'S TITLE OR ITS MARKETABILITY.

CONCLUSION

MY GREATEST HOPE FOR THIS HEARING IS THAT IT WILL SERVE AS A CATALYST TO BRING TO THE LEGISLATIVE PROCESS THE WHITE EARTH TRIBAL LEADERSHIP'S CONCERNS AND PROPOSED SOLUTIONS, ALONG WITH THE CONCERNS AND RECOMMENDATIONS OF THE AFFECTED LANDOWNERS, SO THAT THE COMMITTEE MIGHT MOVE FORWARD WITH CORRECTIVE LEGISLATION IN THE NEAR FUTURE.

ON MANY OCCASIONS IN THE PAST, I HAVE INFORMED MANY OF MY CONSTITUENTS WHO WILL BE TESTIFYING HERE TODAY THAT I STAND READY TO ASSIST IN SETTING UP FUTURE NEGOTIATION MEETINGS AS A MEANS OF

FINALLY RESOLVING THIS SERIOUS DISPUTE ONCE AND FOR ALL. I REAFFIRM THAT PLEDGE HERE TODAY.

I ALSO HOPE THAT THE DISTINGUISHED MEMBERS OF THIS COMMITTEE-MANY OF WHOM ARE WELL VERSED IN PAST PRECEDENTS AND LIMITATIONS ESTABLISHED BY PRIOR LAND CLAIMS SETTLEMENTS--WILL TAKE THE TIME TO SUGGEST ALTERNATIVES AND OPTIONS THAT MAY HAVE BEEN OVERLOOKED. I WOULD ALSO HOPE THAT THE COMMITTEE WILL POINT OUT THOSE NON-RELATED CONCERNS THAT MIGHT BE VOICED TODAY WHICH WOULD BE MORE APPROPRIATE FOR SEPARATE LEGISLATION OR OTHER RESOLUTION.

AGAIN, THANK YOU, MR. CHAIRMAN, FOR YOUR TIME AND EFFORT HERE TODAY. I LOOK FORWARD TO WORKING WITH YOU, YOUR COLLEAGUES ON THE COMMITTEE, THE WHITE EARTH TRIBAL LEADERSHIP, AND THE INDIVIDUAL LANDOWNERS IN ARRIVING AT A FAIR AND EQUITABLE SETTLEMENT THAT WILL RESOLVE THIS COMPLEX PROBLEM ONCE AND FOR ALL.

Senator **Andrews**. Our next witness is "Skip" Humphrey—well, Hubert Humphrey III—the attorney general of the State of Minnesota.

When Mary and I first came to Washington some 20 years ago, we lived about four blocks away from the Humphreys, so it proves that those of us from the upper Midwest do sort of flock together, particularly when we get a little away from the home reservation.

It is good to have you here, Mr. Attorney General. I understand that you are accompanied by Collin Peterson.

Mr. **Humphrey**. State Senator Collin Peterson is with us today, and I think he is scheduled to testify before you. This is Mr. Jim Schoessler, assistant attorney general, who works in our office and is a specialist in Indian affairs.

Senator **Andrews**. Good. Well, Mr. Attorney General, you may proceed. It is good to have you here this morning.

STATEMENT OF HUBERT H. HUMPHREY III, ATTORNEY GENERAL OF THE STATE OF MINNESOTA, ACCOMPANIED BY JIM SCHOESSLER, ASSISTANT ATTORNEY GENERAL

Mr. **Humphrey**. Thank you very much, Mr. Chairman.

I, too, want to commend you on your opening statement. I think it sets forth the approach I would hope that Congress would be able to use in order to help and assist in the resolution of this very important and complex problem.

Mr. Chairman, I am the attorney general of the State of Minnesota. In Minnesota, the attorney general is a popularly elected constitutional officer. Because of that, I feel I represent many interests in the matter under consideration today. My office serves as the legal representative of State agencies such as the Department of Natural Resources, which is the fee owner of thousands of acres subject to land claims on the White Earth Indian Reservation. I represent the State as fee owner, in trust for county governments, of tax-forfeited lands, lands also subject to claims at White Earth.

However, the State's attorney general also represents the interests of the citizens of Minnesota, Indian and non-Indian alike, and that to me perhaps is most important. That is what moves me to come here personally to urge you to take this land claim matter seriously and to try to fashion a congressional settlement that will be fair to Minnesota citizens and that will put the matter behind us.

I have provided the committee with a fairly detailed written submission. That submission discusses the specifics of the land claims, the Federal responsibility for many of the events at the heart of the claims, and the enormous costs of letting those claims go to litigation. I urge the committee to seriously review the written document. It provides a more complete examination of the land claims issue than is possible in my brief oral testimony. I would like, however, to emphasize to you a few of the major points in that written presentation.

Senator **Andrews**. Well, let me assure you, Mr. Attorney General, that we will include your written statement as though given in full. We appreciate your summarizing it so we can have the time to ask you some questions.

Mr. **Humphrey**. Thank you very much, Mr. Chairman.

First, this land claims problem is a large one, Mr. Chairman. At White Earth alone, the Department of Interior is questioning the ownership of over 100,000 acres of land.

Second, the problem is probably more complex than some past land claims addressed by Congress. That is because the claimants in this situation are individual Indians, usually heirs of original allottees, and for the most part the individuals have not yet been identified and are not even known to the Department of Interior. It is not a situation involving just one legal issue with an Indian Tribe as the sole claimant.

The third point that deserves emphasis in today's hearing is that the land problems exist because of the past policy swings and the negligence of the Federal Government itself. Both Congress and the executive branch are largely responsible for the past land transactions currently being challenged by the Department of Interior.

The final point I want to highlight is that litigation over these claims will benefit no one. Litigation will result in enormous social and economic costs. It could cause scars within Minnesota that would take years to heal, and in all likelihood one innocent party or another will be hurt. The losers could be Indian heirs who were victims of ambiguous Federal policies or inept Federal administration, or the losers could be the current landowners who obtained their property in good faith and in many cases have sunk substantial money and time into improving the property. Neither of these parties deserves to be losers or to pay for the mistakes that were not of their own making.

What all this means to me is that Congress must take the time and the effort to deal with this problem. I urge you to give settlement legislation the serious attention it deserves. Senators Durenberger and Boschwitz have made a good-faith effort to get the ball rolling with the introduction of S. 885. We all now need to proceed from there.

I understand that many of my friends from the Indian community do not like S. 885, and believe that its compensation provisions are inadequate. But even the Senators have acknowledged that the bill is just a start. I believe it is a well-drafted start. I urge the Department of Interior, the individual Indian claimants, and the Chippewa Tribal and Band governments as well, to make positive and detailed suggestions about how the bill could be better in their eyes.

In that regard, I am pleased that the White Earth government has chosen to participate in these hearings. Although the actual claimants in the land cases may usually be individual Indians, the Tribal and Band governments certainly have a legitimate interest in the land claims here at issue. I urge the Indian leadership to work with this committee in a constructive fashion to find a reasonable solution to the present problem.

I believe we all, Indian and non-Indian communities, agree on at least one very basic point, Mr. Chairman: We all believe that a fair and reasonable legislative settlement is much better than the chaos that would reign if all of these land claims ended up in court. This is an important agreement. What remains is to decide what is fair and reasonable in the context of the present situation.

This is where the committee has an important role to play. In the last analysis, Congress must decide what is the most appropriate form of settlement. I urge the committee to make a commitment to understanding the White Earth controversy, and I suggest that it might be a wise and prudent course to appoint what would be called an independent master to talk with and gather information from all parties with interests in the land claims problem. Perhaps this master could hold field hearings in the affected communities. He or she could then report back to the committee with recommendations or alternative provisions for a settlement bill.

Such action could provide needed information to the committee and also serve as a kind of catalyst, a congressional catalyst, perhaps enabling different groups to come together to arrive at mutually acceptable solutions. It at least would keep the settlement process going in a positive direction.

Now it is good to see that this committee has chosen to hold a hearing on this settlement legislation. I strongly urge the committee not to stop here. We have a beginning of the settlement process in the form of S. 885. Let us review that, amend it if necessary, and strive to come out with the best settlement legislation possible. This committee, however, must help in that process.

I cannot emphasize enough the negative impacts of failing to arrive at a congressionally ratified settlement. We cannot hide from this problem any longer. It will not go away. I stand ready, as I have in the past, to make the resources of my office available to this committee to help in any way possible. I sincerely hope, for the sake of Indian and non-Indian citizens of Minnesota, that this committee will also devote the resources necessary to help work out this very serious problem.

Thank you very much, Mr. Chairman.

[The prepared statement follows. Testimony resumes on p. 44.]

WRITTEN SUBMISSION OF HUBERT H. HUMPHREY, III
ATTORNEY GENERAL OF THE STATE OF MINNESOTA

I. INTRODUCTION

The State of Minnesota is most concerned about the problems addressed in S.885, introduced by Senators Durenberger and Boschwitz. The land claims controversy in our state threatens to divide communities and turn neighbors against one another. It is hurting innocent people, both Indians and non-Indians, who have done nothing wrong. Current federal actions so far have done nothing to solve the problem. The issue confronted by S.885 is an extremely serious and pressing one. It will not go away.

I believe it is vital that this committee take serious and responsible action to settle the White Earth land claims without litigation. This submission is intended to give the committee a relatively detailed summary of the nature and extent of the land claims problem, and an understanding of the various factors that have to be considered when devising settlement legislation. I will be supplementing this written submission with brief oral testimony as well.

As Attorney General of the State of Minnesota, I am committed to trying to resolve the White Earth land claims without litigation. I readily offer the services of my office to assist the committee in any way that might be helpful.

II. EXTENT AND NATURE OF PROBLEM

As I have said, the land claim problem is an extremely serious one on the White Earth Reservation. White Earth currently consists of approximately 762,000 acres. Over 90% of the reservation land is in non-Indian ownership, and has been for decades. The United States Department of Interior has proclaimed publicly that it believes that current landowners' titles to over 100,000 acres of land are not valid, and rightfully belong to original Indian allottees or their heirs. The Department's announcements have effectively clouded the titles to all this land, and have prevented the current landowners from selling their parcels or in many cases even borrowing money on those parcels. The social and economic disturbances caused by Interior's announcements are severe.

According to figures compiled in March of this year by the State of Minnesota, using several sources of information, a reasonably accurate breakdown of the land claims viewed by the Department of Interior as "serious" is as follows. The Department of Interior has identified about 948 land files which it considers to be active; that is, involving potentially viable legal claims. Those files involve a total of 100,110 acres, or roughly 105 acres per file. Of the 100,110 acres private individuals own 65,910 acres; the state or its counties own 28,880 acres; and the United States owns in fee 5,320 acres.

There are four major categories of legal claims to the 100,110 acres at White Earth. The Department of Interior has identified 526 files which involve allegations of "unapproved trust land sales," although the specifics of these allegations are nowhere to be found in Interior's public files or pronouncements. There are 222 additional files involving lands which allegedly were forfeited improperly to the state for nonpayment of real property taxes. At the heart of many of these claims is the constitutionality of the so-called Clapp Amendments, passed by the United States Congress in 1906 and 1907. Another 107 files involve allegations that the estates of Indians were improperly probated and distributed by state courts. Although details are lacking in these claims as well, it can be assumed that the Department of Interior refused to or neglected to undertake its own probates while these allegedly improper state probates were going on. Finally, the Department of Interior has identified 88 files that involve Interior's own actions in issuing so-called forced-fee patents to Indian allottees without having first received applications from those allottees.

A fact frequently forgotten in discussions about these claims at White Earth is that the claims do not represent claims on behalf of the Chippewa Tribe but are the potential claims of individual Indians, usually the heirs of original Indian allottees. This makes the White Earth situation somewhat different and more complex than some past claims in other states such as Maine. In Maine, for example, the beneficiary of the claim was one entity--the tribe--and the legal question involved one relatively straightforward set of facts.

At White Earth, the beneficiaries of the claims generally are individual Indians, not the Chippewa Tribe or White Earth Band. Furthermore, the Department of Interior in many cases does not even know the names of the potential beneficiaries since Interior has not been determining heirships for most White Earth Indians for decades. The situation is also made more complex since the White Earth claims involve not one set of facts and legal issue but a multitude of fact situations and corresponding legal issues. When considering legislative settlements it must be remembered that the actual persons on whose behalf claims are being identified have not been identified and have not been active participants in the claims process to date.

This is not to say, however, that the Chippewa tribal and band governments have no interest in the land claims issue. They do, for various reasons. Any settlement discussions obviously must include their inputs. Nonetheless, though, we must also realize that the prime beneficiaries of these claims are individual Indians, as yet mostly unidentified.

To summarize the problem, the White Earth land claims involve individual Indian claims to a large amount of Minnesota land, much of which has been owned by non-Indian individuals for many years. Until a few years ago, these current landholders were the undisputed record owners of the land. In some cases there had even been quiet title actions on the land. After the Department of Interior began publicizing its current legal position (in some cases, at odds with its own past position) the titles to over 100,000 acres became clouded and in effect unmarketable. Both Indians and non-Indians are in a state of confusion and uncertainty. That is the situation today.

III. FEDERAL RESPONSIBILITY FOR AN EQUITABLE SOLUTION

The federal government has the primary responsibility for settling the White Earth land claims controversy through settlement rather than through litigation. This is so because in large part it was past congressional and executive branch policies (and lack of federal administrative diligence) that are the causes of the current problem. Over the past 100 years the policies of the federal government have swung wildly back and forth between seeking elimination of tribal groupings with a corresponding assimilation of Indians into non-Indian culture, and promoting tribal independence with a corresponding emphasis of federal trust responsibility toward individual Indians. In like fashion, the Department of Interior for years would ignore its trust responsibilities, and then suddenly would charge off swiftly to defend what it construed to be the Indians' interest. In large part because of these federal policy swings, White Earth has become a reservation that is owned mostly by non-Indians, and which now has huge numbers of land titles sprinkled with alleged irregularities and inconsistencies.

Examples of federal responsiblity for the current mess at White Earth can be found in most of the categories of claims at White Earth. The probate claims are illustrative. Part of the title challenges announced by the Department of Interior involve the allegation that estates of mixed blood White Earth Indians were unlawfully probated by state courts when they should have been probated by the Department of Interior. Yet in the early and mid-1900's the BIA's own frequently stated policy was that, at least with regard to mixed bloods, the estates should be probated in state courts. A letter dated in 1943 from the Superintendent of the Consolidated Chippewa Indian Agency is typical. In responding to a citizen inquiry about the estate of an allottee, the Superintendent wrote as follows:

> Mattie O'Donnell, White Earth 0-2996, classed as adult mixed-blood, was allotted the N 1/2 NE 1/4, Sec. 17, Twp. 144, Rge. 41. In view of the fact this allottee is classed as adult mixed-blood the Probate Court of the County in which the land is situated has jurisdiction to determine the heirs.

The Department of Interior actually refused to determine heirs because in its opinion the state courts had that responsibility.

The above letter reflected the long-standing policy of the Department of Interior. That policy was established as early as 1915 in a formal opinion of the Solicitor of the Department of Interior to the Secretary of Interior (D-29636, August 2, 1915). That opinion concluded, "After consideration of this matter, I am of opinion and so advise you that the Secretary of Interior has no jurisdiction to determine the heirs of adult mixed blood White Earth Indians." (Emphasis added.)

In fact, prior to adoption of this policy by the Department of Interior, the Minnesota Supreme Court had deferred to the federal government in Indian probate matters. However, when the Department of Interior declared it would no longer probate White Earth adult mixed-blood estates, Minnesota courts were the only means available to Indians to accomplish probates.

The Minnesota Supreme Court followed the directives of the Department of Interior and allowed state probates. In the case of *Baker v. McCarthy*, 145 Minn. 167, 170, 176 N.W. 643 (1920), the Minnesota Supreme Court concluded as follows:

> We are mindful of the fact that this is a Federal question, and that the department of interior is distinctively the guardian of the Indian, *and when this department relinquishes all claim to jurisdiction, or distinctly repudiates its own jurisdiction*, assuming the position that jurisdiction exists in the state courts, it would require a very strong case to warrant the state courts in refusing to exercise jurisdiction, thereby leaving those who have rights to assert, and who are entitled to a forum in which to assert them, without any tribunal willing to give them audience. We do not think any such strong case exists.

(Emphasis added.)

For over a half century, the Department of Interior took the position that it would not probate the estates of White Earth adult mixed-blood Indians, and that such Indians had to make use of the state court system. Now the Department of Interior has changed its mind. The Department's new actions have clouded the titles to land probated in state courts with the Department's past blessing. The subsequent purchasers from the Indian heirs that were determined by Minnesota courts should not have to pay for the Department of Interior's changing policy. If federal policy during most of the 1900's was wrong, then the federal government should now assume the burden of correcting its own mistake.

The same kind of situation exists with lands subjected to so-called forced fee patents. For some years it was the formal policy of the Department of Interior to send, unsolicited, fee patents to allottees that had originally received trust patents. Lands were then transferred or otherwise removed from Indian ownership under the authority of the fee patent, without obtaining the approval of the Secretary of Interior. Now, apparently the Department of Interior feels its past policy of sending out unsolicited fee patents was wrong, and that lands transferred by virtue of its _own fee patent_ should be brought back into trust status. Again, any mistakes here were of a federal variety. The ultimate purchasers of lands subject to "forced" fee patents did no wrong and should not be punished many years after the fact. If some reparation is to be made, it should be made by the federal government.

Another illustration of the federal responsibility for the current state of affairs at White Earth involves claims based on allegedly improper tax forfeitures. The challenged forfeitures usually occurred as a direct result of Congressional legislation. When Congress decided to begin to allot White Earth lands in 1889 (pursuant to what is now called the Nelson Act), the allotments were all supposed to be held in trust (and therefore non-taxable) for at least 25 years. Yet only 18 years later Congress passed what is now called the Clapp Amendment of 1907. The statute could hardly have been more clear. It stated:

> That all restrictions as to the sale, incumbrances, or taxation for allotments within the White Earth Reservation in the State of Minnesota, heretofore or hereafter held by adult mixed-blood Indians, are hereby removed, and the trust deeds heretofore or hereafter executed by the department for such allotment were hereby declared to pass the title in fee simple . . . .

34 Stat. 1034 (emphasis added).

Minnesota counties cannot be faulted too severely for following the absolutely clear wording and intent of the U.S. Congress that as to mixed-bloods the "restrictions as to . . . taxation . . . are hereby removed." The counties assessed taxes against various allotments, and in some cases the taxes were not paid and the allotments forfeited for the nonpayment of taxes. Now, some 75 years later the Department of Interior and Justice Department are maintaining that reliance on clear Congressional wording was wrong, and that titles to such lands (many of which are now in private citizens' hands) should be turned over to Indian heirs.

In taxing mixed-blood's allotments, Minnesota counties relied on the crystal clear language of Congress itself. If any entity is to take blame for confusion over tax forfeitures, it should be Congress--the entity that originally enacted the Clapp Amendment.

Furthermore, if the Clapp Amendment was inappropriate, the United States has aggravated the situation by doing very little over the last 75 years to make sure that counties not follow the statute's wording. By now, the titles to forfeited lands are in in the hands of all sorts of entities, from private parties to state government, local governments, and even the federal government itself. At the very least, the Executive Branch has been guilty of gross negligence in carrying out its "trust responsibility" while this has been going on.

Finally, the story is essentially the same with another type of land transaction now questioned by the Department of Interior, although mostly on reservations other than White Earth. This category of potential land claims involves parcels of land which were sold by some Indian heirs without the consent of all heirs. In the past, it was the policy of the Department of Interior to grant its approval for the sale of allotments by the heirs of an original allottee, even though the sale did not have the consent of every heir. The Department currently rejects its own past policy, and claims that the earlier partial consent sales are invalid. Like the previous examples, this kind of land claim comes about as a result of federal error, not state or private error.

There is much room for legal debate about the merits of the Department of Interior's current position regarding the identified land claims. One thing, however, is certain. This whole situation is a sad commentary on past federal policies and practices. The current clouds on the titles to thousands of acres of White Earth land often have their bases in errors on the part of the federal government itself. The state, counties, and private citizens who now have record title are by and large innocent of intentional wrongdoing. However, the Department of Interior and Justice Department advocate taking the land away from, and affirmatively assessing penalties against, the current innocent landowners because of mistakes committed by the national government. Such a position is outrageously unfair. The federal government itself has been responsible for the land chaos that currently exists on the reservation. Congress should therefore take it upon itself to find a way of equitably ending the chaos and settling the land claims by using mostly federal, not state or private, resources.

IV. SOCIAL AND ECONOMIC HARMS OF LITIGATION

The last thing in the world that should happen is for these land claims to go to litigation. The resulting scars perhaps would never be healed. Any litigation initiated by the federal government would result in the most peculiar situation in which the perpetrator of the alleged wrong (the federal government) sues innocent third parties on behalf of innocent beneficiaries for its own mistakes. Neither the original Indian allottees nor the current landowners were responsible for the policies that led to today's land claims. Both Congress and the Executive Branch should be ashamed if these claims go to trial.

The social costs of litigation would be enormous. Long time landowners could have their homes and life's savings, wiped out for wrongs they never committed. The Indian and non-Indian communities could become enormously polarized. Bitterness and hatred could be the main byproducts of lawsuits. Neither would these effects be lessened by the political expedient (apparently being considered by the Justice Department) of suing only public landowners such as the state and county governments. The legal rationale of the land claims is the same with regard to both public and private landowners. Private owners would be forced into any lawsuits against the state or counties in order to protect such owners' interests.

The economic costs of litigation to landowners could also be staggering. The legal and historical issues involved in the claims are extensive and complex. Every landowner would have to hire counsel to protect his house, property, and perhaps savings. The owners would be pitted against the resources of the Justice Department and Department of Interior. Legal costs could overwhelm individual landowners and lead to further bitterness against the government or Indian people.

Litigation is not the way to resolve the land claims problem. Its costs are too great, its results too uncertain, and inevitably there will be innocent losers. A federally fashioned settlement will avoid the multiple costs of litigation and at the same time will finally acknowledge the federal responsibility for causing many of the current problems. A federally fashioned settlement is also the only way of equitably dealing with the land claims issue at White Earth.

V. THE NATURE OF A FEDERAL SETTLEMENT

The most important thing is to settle the land claims without litigation. The only place from which such a settlement can come is Congress; only Congress has the legal authority to deal with this problem. Senators Durenberger and Boschwitz have made a good faith attempt to begin the settlement process by introducing S.885.

This bill (S.885) correctly identifies the categories of past land transactions being challenged today by the Department of Interior. The bill appears to be technically accurate in that regard. The bill then properly makes an assumption which is quite beneficial to potential Indian claimants. The bill makes no attempt to analyze the legal merits of the various categories of claims but rather assumes that they are all valid. This is of major significance to Indian people; it means that Congress will act as though each and every claim would succeed if it went to court.

The bill then recognizes that there generally are two innocent parties with claims to each disputed parcel--the current titleholders and unnamed Indian heirs. The bill allows the challenged land to be kept by current owners of record but tries to give due process compensation to Indian allottees or heirs when they are identified properly. The compensation component of the bill is probably the part that is subject to the most controversy. However, the compensation component is also quite flexible and easy to change if that is desired. There is a valid reason, though, for the bill to allow disputed land to remain in the hands of those who are the current owners and who in many cases have improved the land over the years. Similarly, there is also a valid reason for the bill to provide compensation to Indian heirs in money, which perhaps is more advantageous to an individual Indian than, say, a 1/25 interest in a piece of property might be.

Nonetheless, there is fair room for argument about what the nature of compensation should be. Senators Durenberger and Boschwitz acknowledge this. In some cases, for example, compensation in land or by some other means might be the best for Indian claimants. Those who oppose monetary compensation should propose and discuss specific alternative measures. S.885 provides a starting point for such discussions. This committee can and should consider other approaches as well.

What this committee must recognize, though, is that legislative action is absolutely vital. The land claims issue will not go away if it is ignored. It is not right to leave current landowners in a perpetual state of limbo, unable to do anything with their land and living under a cloud of uncertain future lawsuits. It is not right to let the federal government sue others to correct its own past mistakes. It is not right to let Indian heirs with possible property claims go unidentified and uncompensated for the indefinite future. Congress should act. It should act expeditiously and forthrightly. S.885 is an appropriate starting point.

Senator **Andrews**. Thank you, Mr. Attorney General. It is good to have you here.

What has the attorney general's office done with respect to any potential negotiations?

Mr. **Humphrey**. Mr. Chairman, the attorney general's office, prior to my coming to that office, has been involved in this process; in fact, I believe has some input even with regard to drafting this and other potential legislation. I would like to have Mr. Schoessler comment directly on your question.

Senator **Andrews**. Fine, and also if he can, add which parties you have met with and what proposals the State has offered for settlement.

Mr. **Schoessler**. Mr. Chairman, for approximately the last 2 years there have been various meetings with various parties that have interests in this matter, with an eye toward trying to come out with a mutually acceptable solution. I personally, as a representative of the attorney general, have attended meetings with representatives of the Department of Interior, particularly the field solicitor of the Department of Interior in the Minneapolis area, representatives of the band governments, and representatives of local governments such as the county governments in the affected communities.

The State legislators from those communities have attempted also to bring the parties together to try to talk things out and arrive at a mutually acceptable settlement. Senator Collin Peterson, who is here today, has been instrumental in trying to bring some of the parties together over the course of at least the last year or year and a half. Also, Representative Willis Eken from that area has attempted to work out some sort of a mutually acceptable solution. We have also participated in providing information to the delegation from Minnesota in the U.S. Senate and also the congressional representatives from Minnesota.

To date, however, unfortunately the parties have not been able to come to any mutual agreement as to what would be the best provisions for a settlement bill. I think to date, as far as we have come, everyone agrees that settlement in the form of legislation would be far more beneficial than letting these things go to litigation which I think, as the attorney general suggested, would end up in both social and economic chaos.

Senator **Andrews**. Could you provide, however, for the record of the committee, what proposals you have put forth? It would be of great help to us if we could find the proposals you have put forth, the counterproposals from other people, of course, so that we could examine them as a possible route to solution. I would assume that if you have met in an effort to mediate the problem, that you out of the attorney general's office have come up with several suggestions.

Mr. **Schoessler**. Mr. Chairman, informally we have come up with various modes of compensation. Initially the position that we have taken is that the bill introduced by Senator Durenberger is an acceptable one in the State's view, but we are quite willing to look at other options for compensation, should that be the Indians' desire.

Senator **Andrews**. That is the point we are trying to make. Might I also say that the committee will keep this record open for 2 weeks so that any official of the State of Minnesota, any of the Indian people themselves, or people of the area involved, may submit for the record their statements that may fill out some of the testimony that has been given here. We want to get as much solid information and concrete proposals as we possibly can for our staff to look over. Therefore, if you do have some proposals fairly well defined it would be most helpful to us if you would submit them for the record.

Mr. **Schoessler**. Yes, Mr. Chairman.

Senator **Andrews**. Also, what barriers do you see to achieving a settlement, Mr. Attorney General?

Mr. **Humphrey**. Well, Mr. Chairman, of course I suspect—as I heard in the testimony yesterday, and as I am aware from reviewing and preparing for these matters—one of the key barriers is the anticipated cost of that compensation. It appears as though—at least I believe the testimony was yesterday—it would rise perhaps as high as $30 million and it might even be higher. That, I think, is one key barrier.

Senator **Andrews**. As I understand it, typically in these things about $12 million of it goes to the Indians and about $20 million goes to administer. Is that not essentially correct?

Mr. **Humphrey**. Well, Mr. Chairman, you are more experienced at this than I, but I have heard that there is a problem within that area.

Senator **Andrews**. That is why I get a little jaundiced sitting behind this side of the table. That is what generally comes up.

Mr. **Humphrey**. Yes, and I think that is a serious concern. I hope our office will be able to assist the committee in looking to see whether or not there are better ways of seeing that the money is made available, that more is received in direct fashion by individuals that have those rights than is consumed in the administration of any effort.

I think also there is some case law here that has created some serious problems for the parties, and there is also over 60 years of history of vacillation between one direction or the other that various administrations have taken. I think that without delving too much into that past history—because I think it is for us presently to try and resolve it and to start a new direction—we do have to overcome some of those legal concerns.

Senator **Andrews**. That is true. Mr. Attorney General, what is your professional view of the role of title insurance in this dispute? Is there any insurance coverage on these claims?

Mr. **Humphrey**. My understanding, Mr. Chairman—and I am sure that further testimony by the assistant county attorney in the area will give you some detailed information with regard to that, because he also practices privately and deals directly with this—there has been title insurance in the past. There are now exceptions to that insurance based upon actions taken by the Department of Interior which have really tied up the land and the titles. There is frankly no ability—or at least, very restricted ability now—to mortgage any of the property, make any improvements, to use it as collateral at all.

Senator ANDREWS. How much land does the State have within the boundaries of the White Earth Reservation?

Mr. HUMPHREY. I will have to check it. My understanding is the affected property that we are talking about is in the neighborhood of 28,000 acres.

Mr. SCHOESSLER. Mr. Chairman, within the boundaries of the White Earth Reservation as it currently exists, there is somewhat over 700,000 acres of land. Of that, the State owns in trust for local counties approximately 95,000 acres, and of that the State owns in fee—usually administered for natural resource purposes—approximately 70,000 acres. So, I guess that gives us a total of about 165,000 acres that are owned by the State in fee or in trust for local counties.

Senator ANDREWS. How did the State acquire that land?

Mr. SCHOESSLER. In some cases the fee land was directly purchased by the State, but in most cases the land that is currently in the ownership of the State, either in fee or in trust, came to the State via tax forfeitures.

Senator ANDREWS. Mostly from Indians, I would imagine.

Mr. SCHOESSLER. Yes, correct, and a lot of those tax forfeitures have their basis in what is popularly called the Clapp amendment, which was passed in 1906 and again in 1907, and which ostensibly removed the prohibition against taxation of Indian allotments.

Senator ANDREWS. Yes, but that land is land that is subject to these claims.

Mr. SCHOESSLER. Not all of the land, not all 165,000 acres. The State and the counties own approximately, I think, 28,000 acres of land that are subject to claims, so of that 165,000 only 28,000 have potential claims against them.

Senator ANDREWS. Thank you very much. We would welcome it if you could bring or send to us these proposals that you have made, so we can be completely aware of them.

Mr. HUMPHREY. We will do that, Mr. Chairman.

Senator ANDREWS. It is good to have you with us, Mr. Attorney General.

Mr. HUMPHREY. Thank you very much, and thank you for taking the time to address this problem and hear our concerns.

Senator ANDREWS. That is our job.

Mr. HUMPHREY. Yes, sir.

[Subsequent to the hearing the following information was received for the record:]

STATE OF MINNESOTA
OFFICE OF THE ATTORNEY GENERAL

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

ST. PAUL 55155

ADDRESS REPLY TO
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November 29, 1983

[illegible]

Mr. Paul Alexander, Staff Director
U.S. Senate Select Committee on Indian Affairs
Room 838, Hart Senate Office Building
Washington, D.C. 20510

Dear Mr. Alexander:

On behalf of Minnesota Attorney General Hubert H. Humphrey, III, I am enclosing the attached document for inclusion into the record of the November 17, 1983 hearing on S.885. At the hearing Chairman Andrews expressed an interest in the various categories of claims at White Earth, and also in a breakdown of land ownership on the reservation. The attached document was put together by our office in March of 1983, using the best information then available. It should provide the type of information desired by Chairman Andrews. I submit the document to you as part of the record of the hearing.

Very truly yours,

JAMES M. SCHOESSLER
Special Assistant
Attorney General

JMS:lf
Enc.

SUMMARY OF WHITE EARTH LAND CLAIMS: 3/14/83

1. The Bureau of Indian Affairs has 948 land files (relating to title claims) which it considers to be "active" or subject to future litigation. The Justice Department has said that it will not initiate quiet title litigation on all these files, but the federal government still considers all 948 files to involve serious legal problems which cloud the current land titles.

2. A total of 100,110 acres of land on the White Earth Reservation are subject to the claims identified in the 948 active files. That works out to an average of 105 acres per file.

3. The general ownership breakdown of the 100,110 acres "at risk" is approximately as follows:

(a) Private: 65,910 acres
(b) State or County: 28,880 acres
(c) United States: 5,320 acres

I do not yet know exactly how much of the 28,880 acres is state fee land and how much is land owned by the state in trust for the counties.

4. The county breakdown of the 100,110 acres "at risk" is approximately as follows:

(a) Mahnomen: 46,750 acres
(b) Becker: 39,300 acres
(c) Clearwater: 14,060 acres

5. The breakdown of the different categories of title claims, and number of files in each category, is as follows:

(a) Unapproved trust land sales: 526 files
(b) Improperly tax forfeited lands: 222 files
(c) Improper probates: 107 files
(d) Forced fee patents: 88 files
(e) Improper school or swamp land designations: 2 files
(f) Improper fee patent cancellations: 2 files
(g) Secretarial transfers 1 file
Total Files: 948 Total Acreage: 100,110

6. The Department of Interior has formally requested the United States Justice Department to sue the state and counties in order to get back the titles to approximately 7,348 acres of land. All of this land involves alleged improper tax forfeitures. An ownership breakdown is as follows:

(a) State fee lands: 1,536 acres
(b) State owned in trust for counties: 5,812 acres

The county breakdown is:

(a) Clearwater: 3,556 acres
(b) Becker: 2,373 acres
(c) Mahnomen: 1,419 acres

Also in the same category of alleged improper tax forfeitures are (based on the average acreage per file) approximately 12,500 acres of land held by private individuals. Although the Justice Department has said it will not sue private landowners, the legal claims are the same for the 12,500 acres of private land as they are for the 7,348 acres of state and county land.

7. The total amount of land within the original 36 township White Earth Reservation is 854,000 acres. The ownership breakdown of the total White Earth area is as follows:

(a) Private: 514,000 acres
(b) State owned in trust for counties: 120,753 acres
(c) State owned in fee: 80,247 acres
    (1) Swamp land act - 19,968
    (2) White Earth State Forest - 42,001
    (3) Two Inlets State Forest - 2,448
    (4) Elbow Lake State Park - 1,255
    (5) Wildlife Management Areas (34) - 14,575
(d) United States owned in trust for Indians: 56,000 acres
(e) United States owned in fee: 26,000 acres
(f) Meandered waters: 57,000 acres.

8. The total amount of land within the currently recognized 32 township White Earth Reservation is approximately 762,000 acres. The ownership breakdown of the 32 townships is as follows:

(a) Private: 461,181 acres

(b) State owned in trust for counties: 94,601 acres

(c) State owned in fee: 70,118 acres

    (1) Swamp land act - 12,093

    (2) State forests - 42,870

    (3) State parks - 1,215

    (4) Wildlife Management Areas - 13,940

(d) United States owned in trust for Indians: 53,100 acres

(e) United States owned in fee: 26,000 acres

(f) Meandered waters: 57,000 acres

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November 30, 1983

[illegible] 1983

Mr. Paul Alexander
Staff Director
U.S. Senate Select Committee
on Indian Affairs
Room 838, Hart Senate Office Building
Washington, D.C. 20510

Dear Mr. Alexander:

At the committee hearing on S.885 on November 17 relating to White Earth land claims, Senator Andrews requested that Minnesota Attorney General Humphrey submit some additional information to the committee about past negotiations over possible provisions of settlement legislation. This letter is intended to provide that information.

The only formal written proposals that have been made to date are those incorporated in S.885 and H.R.2246. There initially were no strong objections to these proposals from state or local governmental officials. General objections were made, however, by the White Earth Band. The state and local governments did not make further proposals pending formulation by the Band of its own position. Since no formal or detailed settlement plan was ever put forward by the Band prior to the committee hearing, the process became stalled.

There were, however, several informal meetings among Band and governmental representatives during which possible settlement approaches were discussed orally. Much discussion turned on whether settlement legislation should be focused just on the land claims issue or whether it should deal with other subjects of concern to the Band such as reservation boundaries, hunting and fishing jurisdiction, Public Law 280, and government economic and social programs on the reservation. State and local government representatives generally wanted to focus on land claims; the Band representatives indicated legislation must go beyond that in order to get their support. Discussions began to break down a bit at that point.

The informal meetings did not result in any substantial agreement on the specifics of settlement legislation, but they did help identify some areas of conflict that might be open to negotiation. The categories of claims identified in S.885 did not appear to be in much dispute. There was some dispute about the use of the 1920 blood role as the basis of determining who was a mixed blood and who was a full blood. There was dispute over whether land should be returned to individual Indians with the current title-holders being compensated, or whether current title-holders should retain the land with individual Indians being compensated. There was dispute over whether compensation should be in the form of land or money or both. There was dispute over whether compensation should be given to the Band in lieu of or in addition to individual Indians. There was dispute over whether a settlement program should be administered by the Band or the Department of Interior. There was dispute over whether the bulk of compensation should come from the federal government, state and local governments, or individual landowners. There was dispute over how much any compensation should be. There was dispute over the ability and willingness of the Department of Interior to accomplish the probates necessary to identify heirs of original allottees.

In all of these areas of dispute there is room (to a greater or lesser degree) for negotiations or compromise. The major problem is that the process is bogged down, and the major party in any settlement - the federal government - has not been an active participant. Rather, the federal focus up to this point has been on litigation planning. A prime reason for the Attorney General's participation in the November 17 hearing was to bring the federal government into the settlement process, and to encourage Congress and the Department of Interior to assume some responsibility for solving the problem in a reasonable and equitable fashion.

I hope this letter gives the committee a little better understanding of the history of settlement talks and the areas of conflict with regard to specific settlement legislation. Our office will be available to assist the committee in any further way the committee desires.

Very truly yours,

JAMES M. SCHOESSLER
Special Assistant
Attorney General

JMS:lf

Senator ANDREWS. Our next witness is Mr. Steve Thorne, the Deputy Commissioner for Natural Resources. We might call Senator Peterson and Steve Thorne together.

Senator, Mr. Commissioner, let me assure you both that your prepared statements will appear in the record as if given in full, and you might want to summarize them so that we can have more time for questions.

STATEMENT OF COLLIN C. PETERSON, MINNESOTA STATE SENATOR, REPRESENTING DISTRICT 10

Mr. PETERSON. Mr. Chairman, thank you for the opportunity to testify, and I will try to shorten this up.

I am Collin Peterson. I am State senator from District 10, which includes parts of the White Earth Reservation. I am here today speaking not only for myself but also for the other legislators from that area, who are Senator Roger Moe, the majority leader of the State senate; Representative Willis Eken, who is the majority leader of the House; and Representative Jim Evans, who is from 10–B, which is in my area. We, of course, are from both parties and this is not a partisan issue.

We just want to impress upon you that we see this as a very serious problem and we want to relate to you the frustration that we feel as legislators trying to deal with this situation. Many of our constituents think that we ought to be able to solve this. As you know, this is basically a Federal problem but it is sometimes hard to explain to people, so it has been a real frustrating thing for us.

As you heard from the attorney general and his assistant, we have tried on numerous occasions to bring people together but, frankly, without some involvement on the part of the Federal Government there is not the pressure there to get anything moving. We have been somewhat disappointed in the Department of the Interior as far as the kind of cooperation we have gotten from them. We have gotten good cooperation from certain individuals but generally we feel we have not gotten much help and there has not been much direction from that department.

Therefore, we just want to bring to you our frustrations, tell you that this is an extremely serious problem up there and is very divisive. We are concerned about the economy of the area. We have people who, as you will hear later, are having problems selling property and mortgaging property. Therefore, we are here pleading with you to somehow or another help us bring these parties together. We do not have specific solutions and, frankly, it has been hard to get anybody to put any on the table. I think it is going to take some pressure from someplace else to do that.

The other thing I want to say is that in 1981 we had the Minnesota Legislature pass a resolution that has been forwarded out here to Congress. It was passed, by the way, unanimously by the Minnesota Legislature, asking for a Federal solution to this problem. We again bring that message to you.

Therefore, with that I thank you very much for letting us come here today to testify.

Senator ANDREWS. You mentioned the conversations that you have had in the area between county officials and tribal officials.

Who have the State legislators met with, and what proposals, if any, were considered? When you get together, do you just get together to express your sense of frustration?

Mr. **Peterson**. Well, maybe that is it. First of all, you have to understand that there are a number of people up there who do not think we ought to negotiate anything. That has been a problem. We have at the present time—and this may be changing—but we have county boards that went on record against these negotiations in some of these areas. Therefore, I have taken considerable criticism for even getting the parties together in my area. It has been a problem, so there is not necessarily a consensus that we ought to negotiate something.

Congressman Stangeland, after some urging by myself and others, brought the parties together 2 or 3 years ago. There was one meeting, there were some discussions held, and it broke down at that point. The Bureau was there, but we really did not get anyplace.

Then this last winter I started kind of meeting with individuals and local elected officials and people from the Tribe. We started out in my home. We built a group up that eventually included the DNR, the attorney general's office; Congressman Stangeland was included; people from Senator Durenberger's and Senator Boschwitz's office were included. I think we ended up having five meetings.

At the last meeting we had about 40 people there, and we finally did get some proposals on the table. The people from the White Earth Tribe brought in an oral proposal, and brought in a number of issues besides the land claim issue. They brought in the hunting and fishing issues and those kinds of things, and at that point the negotiations again broke down.

Senator **Andrews**. What was their basic proposal?

Mr. **Peterson**. Well, they may be able to reiterate it because they are here today but basically they want, in addition to solving the land claim problem, they want included in a legislative solution—if I recall correctly—something done with the situation of inadequate health facilities on the reservation. They want something in the legislation to deal with the economic problems and the lack of jobs on the reservation. They also have some concerns in the natural resource area, and so they brought a number of other issues into the debate. People from the counties, townships, and other people involved did not want those extra issues brought into the debate, and that is where it fell apart. They are here again today and may bring some general comments, but it has just been real difficult. Nobody wants to play the first card.

Senator **Andrews**. What, in essence, are the basic proposals of those of you who are legislators?

Mr. **Peterson**. Well, we do not have much ability to provide any solutions. We feel it is basically a Federal problem. I have tried to use my office to bring the two parties together to come up with some middle ground that maybe neither side likes but, as you said, they can live with. I am not wise enough to know what that middle ground is. If I did, I might be someplace other than where I am right now.

Senator **Andrews**. In all of the claims settlements that I mentioned in my opening statement, all of the States have made some significant contribution to that settlement. Is the State of Minnesota willing to make some contribution to the settlement of these claims?

Mr. **Peterson**. Well, I can not speak for the DNR or the Governor's office or the attorney general but I can tell you that myself and the other legislators who are from that area have discussed this and have discussed it with the DNR. We feel, basically, again, that it is a Federal problem but that we would be willing to have some State involvement in this settlement if it would bring about the resolution of it. Therefore, we are certainly open to that. I can not tell you today how far we would go.

One of the things that we have talked about is that there is not enough Federal land on the reservation. There has been some talk about exchanging land. As you know, there is considerable State land, so maybe we could work out some kind of a trade and help in that way.

I just visited with the majority leader, Roger Moe, at the airport on the way out here, and we will just do whatever we can in our power to help resolve this thing because we think it is that serious. We, the State, might have some implication in this but we basically think the problem was caused by swings, as Skip said, in Federal policy and things like that, and we are not sure that we have to make up for all of those sins, totally.

Senator **Andrews**. Thank you, Senator, for a good statement.

[The prepared statement follows:]

PREPARED STATEMENT OF COLLIN C. PETERSON, MINNESOTA STATE SENATOR

Mr. Chairman and members of the committee, my name is Collin C. Peterson. I am a member of the Minnesota State Senate, representing District 10 which includes part of the White Earth Indian Reservation. I am here today not only representing myself, but I am also speaking for other members of the Minnesota legislature whose districts include portions of the reservation. Specifically, my comments are endorsed by Senator Roger D. Moe, Majority Leader of the Minnesota Senate; Representative Willis R. Eken, Majority Leader of the Minnesota House of Representatives; and Representative Jim Evans from District 10B. These gentlemen come from both the Democratic-Farmer-Labor party and the Independent-Republican party. The problems on the White Earth Reservation are not partisan ones.

I am testifying because the entire Minnesota state legislative delegation from the White Earth are views the land claims issue as a very serious one. If some solution short of litigation is not found we are afraid that the result will be social and economic chaos, bitterness, and perhaps violence. Such an eventuality will help no one, Indians or non-Indians.

I am also here to tell you of our frustration in trying to cope with the land claims issue. The United States Department of the Interior has not been very helpful with either explaining the issue or with trying to find a constructive solution to it. Although the Department of the Interior has been quick to announce its position that current titleholders to land are trespassing on trust property, the Department has been very vague about the specifics of its legal claims. Although the Department did not hesitate to take actions which have clouded the titles to over 100,000 acres of White Earth land, the Department has not been nearly as anxious to try to work out a settlement that will not hurt innocent people. Settlement legislation has been discussed and even introduced in Congress for well over a year, but the Department has not yet even commented on it, much less given any input to it. This, in our view, is inexcusable in light of the seriousness of the problem and the federal responsibility for many of the land claims themselves.

I am not going to dwell on the specifics of the land claim allegations or the federal policies which gave rise to the legal theories at the heart of the claims. The Minnesota Attorney General, Hubert H. Humphrey, III, has given the committee a written document which quite adequately discusses these things. The legislators for whom I speak endorse that document and urge the committee to read it thoroughly. We also support the testimony that the Attorney General has given this committee orally.

The point I would like to emphasize is that the announcements by the Department of the Interior regarding the land claims have put current landholders in an impossible and really unfair situation. Interior's announcement have clouded the titles to over 100,000 acres of land. This is not all government land either. Over 65,000 acres is owned by private individuals. There are many farms, small resorts, and small businesses within the boundaries of the White Earth Reservation. The owners of these frequently cannot even borrow money now to improve their properties or in some cases to provide operating funds. Banks are refusing to accept land as collateral for these kinds of loans.

This situation is really unfair to people who have done nothing wrong. It creates nothing but bitterness against the federal government and unfortunately also against the Indian population of the White Earth Reservation. The bitterness and frustration increase when these people are told by the Department of the Interior that there is nothing they can do to remove the clouds from the titles to their land. The bitterness and frustration increase further when these people are told that the United States would like to take their land away from them and in the process also sue them for perhaps hundreds of thousands of dollars worth of alleged trespass damages.

It is an impossible and intolerable situation on the White Earth Reservation today. The Indian and non-Indian communities are being divided. They will be divided further if the federal government persists in its refusal to actively seek a legislative solution to the problem.

This hearing gives us a chance to impress upon you the fact that the land claims controversy is extremely serious in our communities and is not of our own making. The controversy exists in large part because of the inadequacy of past federal policies and administration. Because of that, we believe that the federal government must now take some responsibility for correcting past wrongs without hurting innocent parties. Congress and the Department of the Interior would only compound their past errors if they now neglected what is their current responsibility.

The only real possibility for a just settlement to the land claims issue is for some settlement legislation to be passed by Congress. Congress as a whole, and this committee in particular, must actively confront this problem. This is what the legislators for whom I am speaking ask of this committee. We need your active participation in formulating and passing responsible and equitable settlement legislation.

In 1981 the Minnesota legislature unanimously passed a resolution memorializing the President and Congress to seek a settlement of the White Earth land controversy. The resolution concluded: "Be it resolved by the Legislature of the State of Minnesota that the President of the United States and the United States Congress should seek a settlement to this controversy which equitably and adequately addresses the concerns of all of the parties involved."

We repeat that request today. The state legislative leadership is ready to do what it can to help. This is not an issue that can be dealt with at the state level. The solution has to come from this committee and from Congress as a whole. We urge you to take this matter seriously and give it the attention necessary to resolve the problem.

Senator **ANDREWS**. Mr. Thorne, let me assure you that your statement will be included in the record as if given in its entirety.

STATEMENT OF STEVEN G. THORNE, DEPUTY COMMISSIONER OF NATURAL RESOURCES, STATE OF MINNESOTA

Mr. **THORNE**. Thank you, Mr. Chairman. I will just summarize and perhaps respond to some of the questions that you asked.

I am Steven G. Thorne. I am the deputy commissioner of natural resources. I have been such since 1978. Prior to that I had Mr. Schoessler's job in the attorney general's office and worked on Indian matters, so I have had some experience in the area for about 11 years now, and have worked with the attorney general's office and with legislative leaders and local governments in attempting to resolve this issue.

I am here today not only representing the department of natural resources but also Governor Rudy Perpich, who is personally interested in the solution of this and has personally traveled to White Earth and visited with both the Indian and non-Indian citizens on the reservation in an attempt to try to define the issues and identify possible solutions.

Now, I will get right to some of the questions that you have raised. First, you asked what the State has done by way of specific proposals. The State has actively participated in trying to come up with proposals and the legislation you see, as Mr. Schoessler indicated, is really a first shot at that. We recognize it is only a first position but it does require, I think, some response from the Department of Interior and some further written and extensive response from the band.

As Senator Peterson has indicated, there has been general oral response but no concrete proposals from either the band or the Department of Interior on this subject. There was discussion about bringing in a number of different issues which, of course, the State views with some concern because of the breadth of the problem it creates. By looking at every issue on the reservation in the context of the land claims settlement, it becomes that much more difficult to solve the individual problem because each problem has such a long history.

For example, the hunting and fishing rights issue was brought into the discussion at one point. If we are to tie the settlement of hunting and fishing rights to this particular legislation or this particular question, it will certainly draw out the time that it is going to take to settle this because that, in itself, has been going on for some 75 or 80 years. That is a subject that deserves its own consideration. The State is doing its best to try to resolve that issue but it has to be resolved, I think, on its own and not as part of the land claim question.

We are attempting to begin discussions with the local non-Indians and the local Indians on the hunting and fishing rights question. I have had several meetings just this year on that and there seems to be some movement in that direction, but to tie those two together we think would just make it impossible to settle the whole issue, so that is one problem. We just do not think that all of those issues can be settled together.

As far as what the State could do as part of a settlement, the State does certainly have a substantial amount of land in the reservation, both county tax-forfeited land to which the title is technically in the State but in trust for the taxing districts, and land that is owned in——

Senator Andrews. What kind of income does the State derive from the land that they have?

Mr. Thorne. I do not have the exact figures for the lands inside the reservation. We developed it for the litigation, but the primary income that is derived from the lands in the reservation is forestry. The income at the present time, I would venture to say, is not large because the timber market in the area is somewhat depressed, but that would be the primary income.

The rest of the lands are not managed for forestry. There is a State park on the reservation. There are several wildlife management areas which do not generate revenue but of course generate public benefits of various sorts by their management. All of the land that the State manages and the county manages are managed for various public purposes, ranging from forestry to outdoor recreation and wildlife.

Senator **Andrews**. Can you provide for the record, or can you sum up now, any proposals that you have presented on behalf of the Governor to the people in the area involved?

Mr. **Thorne**. Mr. Chairman, as I mentioned earlier, the kind of approach that is in this legislation amounts to a beginning proposal. We are prepared to do whatever we can to negotiate refinements and amendments to the legislation that respond to the needs of the Indian people on the reservation and the non-Indian citizens. We would like to do that. We feel it takes an active response, however, an active involvement from the band, the tribe, and the Federal Government.

Senator **Andrews**. Thank you very much. We appreciate your coming here. You have given us a beginning to work on.

[Subsequent to the hearing the following information was supplied by Mr. Steven G. Thorne, deputy commissioner, Department of Natural Resources, State of Minnesota:]

REVENUE FROM THE SALE OF TIMBER ON STATE LANDS ADMINISTERED BY THE MINNESOTA DEPARTMENT OF NATURAL RESOURCES WITHIN THE 32 TOWNSHIP DIMINISHED RESERVATION, FISCAL YEAR 1983

[Total volume (in cords) and value (in dollars) sold in the (fiscal year) 1983]

Township	Value	Total cords
141–37W	$2,029	255
142–37W	12,182	1,260
142–38W	7,761	1,494
142–39W	327	87
143–38W	2,149	507
143–39W	7,160	1,671
143–40W	6,864	1,726
144–38W	145	11
144–40W	225	75
145–38W	5,218	410
145–39W	8,466	1,293
146–39W	146	28
Total	52,672	8,817

Note: These figures cover only lands administered by the State. Revenues from tax-forfeited lands administered by the counties are not included nor are revenues from Federal lands. Further, these figures are for timber sales receipts only.

Prepared Statement of Steven G. Thorne, Deputy Commissioner of Natural Resources, State of Minnesota

Mr. Chairman and members of the committee, my name is Steven G. Thorne. I am the Deputy Commissioner of the Minnesota Department of Natural Resources. I am appearing today as a representative both of Governor Rudy Perpich and of the Minnesota Department of Natural Resources.

In general the Governor and the Department of Natural Resources endorse the positions of the Minnesota Attorney General and the state legislative leaders. The Governor views the land claims issue as an extremely serious matter. This past summer Governor Perpich emphasized the gravity of this problem by traveling to the White Earth Reservation and meeting with both Indian and non-Indian citizens. During that trip he learned first-hand of the frustrations both groups have experienced in trying to deal with this issue.

It must be settled. It would be irresponsible to let these claims all go to court. As previous speakers have stated, the title to 100,000 acres is at issue. Most is owned by private individuals whose lives could be seriously and adversely affected by the outcome of litigation. The rest, some 28,000 acres, is owned by the state either in fee or in trust for local governments and is used for a variety of public purposes such as outdoor recreation, forestry and wildlife management.

Only Congress can resolve this problem fairly and effectively. The state has no legal authority to enact a legislative settlement.

It is also appropriate that a settlement come from Congress. As others have testified, past federal practices and policies have created the current claims. The federal government was responsible for many of the past problems; the federal government should be responsible for their resolution.

Thus, I too, on behalf of the Executive Branch of state government, urge you to seriously pursue settlement legislation to resolve the claims on White Earth. This committee must take a direct role in the process. We also offer our assistance to the committee in any way that might help.

Senator ANDREWS. Our next witnesses will be Darrell Wadena, the chairman of the White Earth Reservation Business Committee, accompanied by Jerry Rawley, who is the secretary-treasurer of the White Earth Reservation Business Committee.

Mr. Chairman, good to have you here. As I said before, we will be glad to have you summarize any statement you might have. Your statement will appear in its entirety in the record as if given orally.

STATEMENT OF DARRELL WADENA, CHAIRMAN, WHITE EARTH RESERVATION BUSINESS COMMITTEE, WHITE EARTH, MN, ACCOMPANIED BY WARREN HEISLER, JR., EXECUTIVE DIRECTOR, AND VIRGINIA ROGERS

Mr. WADENA. Thank you, Mr. Chairman.

My name is Darrell "Chip" Wadena. I am chairman of the White Earth Indian Reservation. Jerry Rawley, who was supposed to accompany me, had an emergency at home and had to leave. Therefore, with me on my right I have Warren Heisler, Jr., who is the executive director of White Earth, and on my left is Virginia Rogers, who is doing probates for us in White Earth.

Mr. Chairman, with your permission I am going to be very brief. We have submitted our statement in whole and at this point, with your permission, I would like to also submit for the record an article that appeared in the North Dakota Law Review, volume 59:159, 1983, by Edward Michael Peterson, Jr.[1]

Senator ANDREWS. Without objection, the article will appear following the chairman's testimony.

Mr. WADENA. OK. You know, in our testimony that we presented, Mr. Chairman, we have identified eight major categories that are possible claims to various types of land on White Earth. In considering this complex land claim dilemma, I guess we understand and also note that there are problems on White Earth in regard to third party owners. Of course, we are sympathetic to that.

We realize, of course, that the problem that we have today is not caused by those people who are now suffering some of the problems that they are suffering. However, one of the things that a lot of people seem to forget is, what about the Indian allottee that lost this land 100 years ago, or 70 years ago, or whatever it might be?

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[1] Retained in committee files.

Nobody seems to give him any consideration for the time or how it was taken from him or when it was taken from him or what was done in the ensuing time since he lost it, up until today.

The bill that is introduced at this point, S. 885, purports to settle the land claims. We feel it is unjust compensation, mainly because it is going to cost the Government anywhere from $35 to $37 million, according to some of the estimates that we heard. Out of that, $12 million would go toward the per capita distribution to the allottees or their heirs, which would amount to an average of about $300 per individual. We do not feel that that is just compensation.

What we would like to do at this point, the White Earth Reservation Business Committee would like to offer a settlement concept that we believe would meet the test of equity for the Indian people, provide clear title for the affected non-Indians, and serve the best interests of the public at large. Our concept would operate on the basis of a willing seller of economically viable land within the exterior boundaries of the White Earth Reservation; provide for Federal purchase of such lands as economic units, with the land to be made part of the reservation held in trust; establish an economic development fund to be administered by the business committee, with use of the fund restricted to economic development in relation to the newly acquired land; protect the constitutional rights of the original allottees and prospective heirs by issuing them some form of interest in the tribal development entity, but give such entity the first right of refusal if the shareholder desires to sell his or her interests; address tribal jurisdictional rights relating to hunting and fishing, et cetera; and establish a formula for monetary contributions, at least from State and counties holding disputed allotments, to ease the Federal burden for the cost of settling this issue.

In conclusion, the business committee believes the only remedy fair to the Indians is to provide for the return of economically viable lands to the reservation with adequate resources to develop such lands for the benefit of the band as a whole. The United States created the White Earth land claim dilemma that has contributed to the economic deprivation of scores of Indian people. The proposed legislative resolution falls pitifully short of compensating the affected Indians and must be rejected by Congress.

At the same time, if the United States does nothing to resolve these land claims the situation will become even more complicated, and could lead to suits and countersuits by Indians and non-Indians alike. Any development on the disputed lands could be delayed for years. Our settlement concept offers the United States an opportunity to resolve a divisive Indian land issue with fairness and equity to all parties.

What I would like to say in conclusion, Mr. Chairman, is that we are here in, I guess, an atmosphere of cooperation. Like Hubert Humphrey said, and I guess we are of the same attitude, we would like to create an atmosphere of cooperation—along with the congressional offices of Senators Boschwitz and Durenberger, of course, and also that of Congressman Arlan Stangeland, along with State and local officials and people—to hopefully work out some type of equitable solution. I would like to emphasize that point, that "equitable" portion of it, that would possibly bring to resolution the dilemma that we now have on White Earth.

Senator **Andrews**. Thank you, Mr. Chairman.

On what basis should the White Earth Chippewa Tribe become a part of this legislation or any settlement of these claims?

Mr. **Wadena**. Well, that is the interesting question, I guess.

Senator **Andrews**. That is why I asked it.

Mr. **Wadena**. Well, you know, we found ourselves in an interesting position, mainly because the claims themselves are individual claims, and our position is mainly political, you know, looking out for the rights of those constituents who become our responsibility, once we become officials of tribal government.

Our early concern was that if in fact there was some type of settlement, we were concerned that it would not become another general allotment whereby persons then, if they were awarded land or whatever, could go out and sell it again, so it would just pass in and out of Indian hands again. We were concerned about that.

Our main concern is creating an economic land base.

Senator **Andrews**. Well, in your testimony you make a rather detailed alternative proposal for settling these claims. To whom has that proposal been presented to date, and have you had any feedback on your proposals?

Mr. **Wadena**. No, we have not. You know, that was just what we came up with. Well, that was one of the proposals that we came up with and that was the latest one. We just presented it for the committee yesterday.

Senator **Andrews**. In your testimony you mentioned, and you mentioned just a moment ago, both a land base and an economic development fund as elements of a settlement. Can you expand on these elements? For example, how much land and how much money for economic development?

Mr. **Wadena**. How much money, you ask?

Senator **Andrews**. Yes.

Mr. **Wadena**. You are talking about the bill back here, and it is estimated that the bill would cost maybe $35 to $37 million. That is counting administrative fees. Also, it decides the per capita distribution that would go to the heirs. I do not know. Anywhere within that figure—$30 million; plus a land base.

Mr. **Alexander**. Can you give us an idea of what kind of acreage you are talking about?

Mr. **Wadena**. Well, the State has some tax-forfeited lands within the boundaries of the reservation. I think they mentioned 89,000 acres. I think I heard Steve Thorne say that, and another *x* amount of 42,000 or something like that. But, apparently that land cannot be worth too much or otherwise it would not be in tax-forfeited status. Somebody else would have grabbed it up. We would take some of that, you know.

Mr. **Alexander**. Do you have a ball park figure on what sort of acreage you think would be a sufficient land base for tribal interests, to get some idea of what elements you are talking about?

Mr. **Wadena**. Oh, this would be a buy-back, like what we are talking about. If we had a fund for a buy-back on a willing seller basis, you know, whoever wanted to sell back.

Senator **Andrews**. In your proposal, Mr. Chairman, how will the interests of individual Indian descendents be compensated?

Mr. Wadena. We would give them either an interest in the land that is reacquired or in a corporation that we would develop as part of that land development.

Senator Andrews. Have any of the individual members of your tribe brought suit for their lands?

Mr. Wadena. Not that we know of.

Senator Andrews. Have you participated in any meetings with the non-Indian community on trying to develop a united proposal?

Mr. Wadena. Yes, we have.

Senator Andrews. How many?

Mr. Wadena. About three or four, I would say.

Senator Andrews. Do you feel that there is beginning to be a meeting of the minds?

Mr. Wadena. Well, it started up really well and then kind of slowed down again. I do not know why. It comes and goes.

Senator Andrews. In your opinion, will the tribe be better off by simply having these claims litigated or will they be better off with a legislative solution?

Mr. Wadena. Litigation is going to be a long, expensive process. You know, that could take years and years.

Senator Andrews. Therefore, speaking on behalf of the tribal members, you are telling the committee that the tribal members will be better off with a legislative solution than they will be with something worked out by legislation.

Mr. Wadena. They would be better off with a legislated solution.

Senator Andrews. Senator Boschwitz is here now.

Would you like to ask any questions of the chairman, Senator?

Senator Boschwitz. No, no. I came in in the middle, Mr. Chairman.

Senator Andrews. Mr. Chairman, I want to thank you for an excellent statement. You have done very well. We appreciate your testimony.

[The prepared statement follows. Testimony resumes on p. 81.]

STATEMENT OF DARRELL "CHIP" WADENA, CHAIRMAN, WHITE EARTH RESERVATION BUSINESS COMMITTEE, MINNESOTA, BEFORE THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS AT HEARINGS ON S. 885, A BILL TO SETTLE WHITE EARTH LAND CLAIMS. NOVEMBER 17, 1983.

Mr. Chairman, the White Earth Reservation Business Commitee has a vital interest in the equitable resolution of the numerous land claims on the White Earth Reservation in Minnesota. We conservatively estimate that approximately 120,000 acres of land, without third party claims, within the Reservation may be subject to such claims.

While the Business Committee readily acknowledges that any benefits flowing from successful prosecution of the claims vest with the few living original allottees or their heirs, we believe that our presence here today is justified by virtue of our political leadership roles and responsibility to work in the best interests of all members of the White Earth Reservation.

Over the years, the Federal Government (Executive, Legislative and Judicial) through various actions has created one of the most complex and potentially expensive land claims situations in the annals of Federal-Indian relations.

These actions set the stage for allotment in 1889 of the 825,000-acre White Earth Reservation, which was created through a series of treaties culminating in 1867 and set aside for the beneficial use of the Chippewas. Further Federal actions provided for what was considered to be legal alienation of virtually all, if not the most, desirable allotments within the Reservation.

More recent Federal legal actions have declared the alienation of such allotments to be illegal, casting a serious cloud on the titles of numerous third parties and public entities (Federal, State, County and tribal) who believed for many years they had acquired clear legal title to the former Indian allotments.

Mr. Chairman, I request permission to include at this point in the record an article which appeared in the North Dakota Law review - 1983 by Edward Michael Peterson, Jr. This article, in my view, sets forth in vivid detail the historical-legal developments which have contributed to this land claim dilemma for third parties, public entities and, most certainly, the Indian people who for several decades have been denied the beneficial use of and economic benefits from their lands.

Through our own research, we have classified the potential claims in the following categories:

1. If a minor, full or mixed blood, sold land without the approval of the United States Government, a claim appears. A minor is a person under the age of eighteen. Many of the allottees' birth dates appear on the 1920 Blood Roll.
2. Forced fee patents were issued in the 1920's pursuant to the Clapp Amendment. Secretarial authorizations were dated April 14, 1919, and December 8, 1919. The patents issued before the trust periods expired and without the application or consent of the allottees or their heirs are recorded in the serial record of the patents. The land was often lost through tax forfeiture or involuntary alienation, thus leading to clouded titles.
3. If an allottee or all his heirs did not convey, did not convey in a valid manner, or did not consent to fee status, a claim may exist on all or an undivided partial interest in an allotment. In many cases a county later took the property in invalid tax forfeiture proceedings. Fraud and forgery may also be involved.
4. Sometimes errors were made in the allotment process. For example when non-Indians received an allotment, when Indians received dual allotments, or when persons received an allotment without selecting one.

5. When the allotee's estate was admitted to probate in a county court having no requisite jurisdiction, when a court-appointed administrator was authorized to and did sell land, or when an heir died and an undivided fractional interest was sold by a county court-appointed administrator, a clouded title appears if not all the rightful heirs were determined.
6. Unapproved sales by full blooded heirs or non-White Earth heirs unclassified at the time of the sale result in a potential claim.
7. Other types of potential claims, although not pursued by the Government, may indicate a legal problem with the title that could be asserted by individuals, the Tribe, or the White Earth Band. Claims against the Government or discrepancies in the 1920 Blood Roll are examples.
8. Further research will reveal other types of claims, especially under treaty provisions relating to certain land grants and allotments made in the treaties.

Although our classification may vary somewhat from that of the Department of the Interior, we believe our list includes every justifiable claim.

Mr. Chairman, the hard, cold, practical reality of the White Earth land claim issue is that the titles were never legally extinguished on countless Indian allotments; and, therefore, numerous third parties and public entities now claiming title to such lands stand in a trespass situation - and in many instances have enjoyed enrichment from these allotments at the expense of Indian people.

In considering this complex land claim dilemma, the question must be posed: What legal action has been initiated by the United States, in fulfilling its legal trust responsibility to Indians, to reclaim the lands in question for the rightful Indian owners and to compensate them for damages?

It is a sad and shameful commentary that the Department of Justice has not filed a single claim in Federal Court in behalf of a single Indian to seek the return of his land and to provide him with just compensation. This is so even in the face of the Department of the Interior's thorough legal analysis supporting the Indians' legal claims along with identification of precise tracts of lands, the purported owners, and suggested options for resolution of the various claims.

The Reservation Business Committee can only conclude the United States' timidity in fulfilling its trust role in behalf of the Indians stems from the fear of political pressure at the prospect of dislocating third party interests from Indian lands they are illegally occupying.

Ironically, a non-Indian affected by the White Earth land claims recently filed suit in the U. S. District Court against the Secretary of the Interior and prospective purchasers of his lands. As we understand the suit, plaintiff is seeking to clear title to land up for sale that is impacted by the land claims on the Reservation. This suit should serve as a forceful reminder to the United States to seriously address the White Earth land claims issue and work towards a solution that is fair and equitable to all parties.

Bills introduced by the Minnesota Congressional delegation (S.885 and H.R. 2246) purport to settle the White Earth land claims. These proposals would extinguish Indian title to the disputed allotments, provide the Indians with unjust compensation and subject the United States to considerable cost ($35M - $37M according to the Department of the Interior's estimate) with a large percentage of such funds to be absorbed through administrative overhead with the result that each affected Indian will receive an average payment of a mere $300.00. The Business Committee vigorously opposes both measures because of their patent disregard for the rights of the Indian people. We urge the Administration to oppose their enactment.

Even if the Federal Government were to pursue litigation and were successful in returning the disputed allotments to the rightful Indian owners, except for a few allotments, the large number of heirs would serve only to compound the so-called Indian heirship land problem. This situation would result in increased Federal costs to manage the land and would limit the economic potential for the heirs because of the fractional ownership pattern.

The White Earth Reservation Business Committee would like to offer a settlement concept that we believe would meet the test of equity for the Indian people, provide clear title for affected non-Indians and serve the best interests of the public-at-large.

Our concept would:

- Operate on the basis of a "willing" seller of economically viable land within the exterior boundaries of the White Earth Reservation;
- Provide for Federal purchase of such lands as an economic unit, with the land to be made part of the Reservation, held in trust;
- Establish an economic development fund to be administered by the Business Committee, with use of the fund restricted to economic development in relation to the newly-acquired land;
- Protect the constitutional rights of original allottees and prospective heirs by issuing them some form of interest in a tribal development entity, but give such entity the first right of refusal if the shareholder desires to sell his or her interest;
- Address tribal jurisdictional rights relating to

hunting and fishing, etc.

- o Establish a formula for monetary contributions, at least from the State and Counties holding disputed allotments to ease the Federal burden for the cost of settling this issue.

In conclusion, the Business Committee believes the only remedy fair to the Indians is to provide for the return of economically viable lands to the Reservation with adequate resources to develop such lands for the benefit of the Band as a whole. The United States created the White Earth Land Claim dilemma that has contributed to the economic deprivation of scores of Indian people. The proposed legislative resolutions fall pitifully short of compensating the affected Indians and must be rejected by the Congress. At the same time, if the United States does nothing to resolve these land claims, the situation will become even more complicated and could lead to suits and counter suits by Indians and non-Indians alike. Any development on the disputed lands could be delayed for years. Our settlement concept offers the United States an opportunity to resolve a divisive Indian land issue with fairness and equity to all parties.

Darrell Wadena,
Chairman

Jerry Rawley,
Secretary/Treasurer

WHITE EARTH

RESERVATION
BUSINESS
COMMITTEE

P.O. Box 418
(218) 983-3285

WHITE EARTH, MINNESOTA 56591

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Senate Select Committee on Indian Affairs
U.S. Senate
November 16, 1983 Oversight Hearings

on

White Earth Indian Land Claims
Supplemental Written Testimony
of Darrell "Chip" Wadena, Chairman
White Earth Reservation

I must at the outset put forth my firm conviction that the issue before the Congress of the United States of America is whether justice can prevail in the face of overwhelming political interests. I feel the test of justice in a legislative solution is:

> A test of a good legislative solution is fairness and equity to all, to Indians who are, in this case, Indian citizens of Minnesota, and non-Indian citizens of Minnesota, and both citizens of the United States of America.

I would also like to point out that the history of the land claims issue far pre-date the present non-Indian issues pertaining to land titles. These issues have been thoroughly investigated by several Congressional hearings held on the White Earth Reservation. In one investigation titled Investigation of the White Earth Reservation, with transcript and testimony taken from July 25, 1911 to March 28, 1912, House Calendar 357, 62nd Congress, 3rd Session presented by Mr. Graham, a vivid account of the fraud and scheming is given. I would ask that a thorough review of such reports be performed before Congress takes any action on the present legislation.

District Representatives

DISTRICT I
Alfred Ray Fox

DISTRICT II
Albert Folstrom

DISTRICT III
Warren (Dude) Warren

Warren Heisler, Jr., Executive Director

One important factor is that at the time of these hearings a majority of these issues were present and Congress could have corrected these same issues at that time.

We feel that all the lands on White Earth are contested and not just the 120,000 acres as stated by the Department of Interior, which rejected all third party claims. If justice is to be served then the lands within the entire reservation should be systematically reviewed.

The Indian heirs feel that Congress will not restore their interests because of the decision by the Justice Department not to pursue third party claims.

Again, I must reaffirm our willingness to resolve these complex legal and emotional issues. What we want is a just and equitable resolution. When we met with the Becker, Clearwater and Mahnomen County Commissioners and Minnesota Legislators we gave our list of needs to begin the bargaining process. However, the Counties felt what we were asking was outside of their political authority to provide. What we wanted, and they could have provided, was a unified position from the local non-Indian groups and the White Earth Reservation. This recognition was not beyond their scope of authority. All that we asked was that they, the counties, recognize the needs of the White Earth Reservation members. However, what they wanted was for the White Earth Reservation Tribal Government to settle their issues first, the legal title to Indian lands and then they would help us settle our issues. That is not the spirit in which true cooperation must exist to redress these complex issues. If there was a true spirit to get all affected persons whole again, then the counties should have and must support our contention that we do need other issues resolved in favor of the heirs who will loose their interest in the land forever.

Attached is a short review of the legislative acts that have systematically taken the lands out of the hands of the Indians. I again request that Congress thoroughly review all of the documentation that shows the fraud and theft of Indian lands and who the true victims are in this land issue.

WHITE EARTH RESERVATION

Introduction

Any attempt to tell the story of White Earth in a summary fashion is practically doomed at the outset. It was the largest reservation both in terms of size and population. It was the ultimate focal point of the consolidation effort. It contained land and timber greatly desired by non-Indian people. It was singled out by Congress for special legislation. It provided the setting for one of the more blatant land grabs in the last hundred years which led to litigation that may have involved as many as three thousand cases.

With the foregoing comments serving as background and as a form of caveat, this commentary should be read very critically. The importance of White Earth cannot be over-stressed. This importance is due in part, because there were more than 8,000 allottees at White Earth. This is compared to the next largest reservation, Leech Lake, which had only 1,800.

CREATION - BOUNDARIES

One word keeps reappearing throughout this memorandum; consolidation. The effect of consolidation on the other reservations was to reduce their landholdings and population, whereas the opposite was true at White Earth. In fact, White Earth was created to provide a sanctuary of sorts that contained within it three different types of natural environment; pine forest, agriculture lands, and mixed forest and prairie. In short, White Earth was to be a miniture Minnesota for all the Chippewa of the state.

The reservation, as mentioned several times previously, was created in the treaty of 1867. The vast Leech Lake Reservation of the 1864 treaty was reduced and in return, the Chippewa were given a tract of land consisting of thirty-six townships that included White Earth and Rice Lakes. When this tract was located and surveyed, it extended from township lines 141 to 147 and from range lines 37 to 42. The provisions of this treaty included the issuance of certificates to Indians from 40 to 160 acres of land depending on their ability to cultivate it. Lands thus issued were tax exempt and could not be alienated without the consent of the Secretary of the Interior and even then only to other members of the Chippewa Tribe.

The boundaries of this reservation have remained far more constant than the continual expansion and contraction of the boundaries of the Leech Lake Reservation. Only two executive orders relate to the boundaries of White Earth. The first in 1879 enlarged the reservation quite significantly. However, the time that this land was in Indian control was a short four years. Since the lands set aside in 1879 were not required "for the purposes for which they were set apart," the first order was cancelled in 1883.

One other boundary change came in 1889. Four townships in the eastern part of the reservation were ceded to the United States by an agreement signed July 29, 1889 pursuant to the Nelson Act. The plunder and rape of the timber on those lands is a story too long to be set out here. Folwell describes the loss and provides an insight to the greed that prompted it.

Loss of White Earth Lands

Of the over 800,000 acres of land originally set aside for the Chippewa of Minnesota at White Earth, only about 7% still remains of Indian control. Folwell, normally the objective and unemotional historian, entitled his section on the loss of this land, "The Tragedy of White Earth". His introductory paragraph sets the tone for this memorandum as well as for his history.

> It was the expectation of the government, from the time of the establishment of the White Earth Reservation in 1867, that eventually all the Chippewa of Minnesota would be consolidated there in a rich and beautiful country, where, safe from the white man's whiskey jug, they would become prosperous and orderly citizens. Their allotted

> lands were to be free from taxation and inalienable except to members of the Chippewa Tribe. The task, far from pleasant, of relating the failure of this beneficent program is now before us. The virtual destruction of the White Earth Reservation has been effected by means of a series of legislative and administrative acts that have the appearance of a systematic, premeditated scheme. This may well be discredited, but it remains a fact that there was a logical sequence to them, which has been thought by many to justify such a conjecture. The underlying motive was simply to immemorial greed of the white man for land and for the exploitation of natural resources.

The real beginning of the end for White Earth as for the other reservations was the Nelson Act. Lands not used for allotments were to be ceded. In this however, the effect of the Nelson Act on White Earth was far different from other reservations, such as Leech Lake where only 14% of the land was allotted. The remaining 86% at Leech Lake automatically passed out of Indian hands by the operation of the Nelson Act. At White Earth, however, 95% of the originally acreage was allotted. Since allotments were given in trust, which meant that the land was not alienable, taxable, or subject to encumbrance, the landgrabbers and speculators first had to obtain legislation to remove these restrictions.

The Act of May 27, 1902, was an act of general application and affected all reservations where allotments had been made. This Act allowed heirs of deceased Indian allottees to sell the lands that had descended to them. The consent of the Secretary of the Interior was required and lands so conveyed passed free of restrictions.

Although an amount of land at White Earth that was affected by the Act was not large, it did provide enough land for five townsites along the Minneapolis-St. Paul and Sault Saint Marie Railway Company's line through the western portion of the reservation. These five towns: Callaway, Ogema, Waubun, Mahnomen, and Bejou quite naturally "became centers of agitation for the release of neighboring Indian lands to white settlement."

Clapp Act of 1906

No one act of Congress was as effective as the Clapp Act in causing the loss of Indian lands at White Earth. It was almost as effective as a termination act. Although a detailed account of the passage of the Clapp rider of 1906 and its resulting effects is not possible here, the short outline that follows gives the basic data.

Contrary to what had been a wise policy some allotments had been made on the valuable timber lands of White Earth. An earlier bill in 1904, also known as the Clapp rider, made it possible for the Indians to sell the timber on their allotments with the consent of the Secretary of the Interior. Almost at the same time, Senator Clapp introduced a bill to grant to the Chippewa of White Earth their full 160 acre allotment.

At this point, it should be mentioned that the Dawes Act which provided for quarter section allotments was amended in 1891 to allow allotments of only 80 acres. This, of course, infuriated the Indians who had been promised the full allotment. The bill introduced by Senator Clapp was, on the surface at least, designed to rectify past wrongs. After passage in the Senate it was sheparded through the House of Representative by Halvor Steenerson of Minnesota and thus acquired the name of the Steenerson Act.

When coupled with the Clapp rider of 1904, the Steenerson Act effectively provided for the destruction of the White Earth timber, "The Clapp rider of 1904 provided for the sale of allotment pine and the Steenerson Act furnished the pine". These two acts did not provide for the sale of the land itself but they were the immediate forerunners of the act that would.

Those Indians who had received the additional allotment on the pine lands had sold the timber and thus had become "rich". The question posed by persons interested in the "relief" of the Chippewa was "why should allottees having timber to sell get rich, while those who had obtained agricultural tracts stayed poor"? Congress was to be the instrument to relieve those Indians. In 1906, the Clapp rider became law. The innocuous-looking act, in its entirety, is as follows:

> That all restrictions as to sale, incumbrance, or taxation for allotments within the White Earth Reservation in the State of Minnesota, now or hereafter held by adult mixed-blood Indians, are hereby removed, and the trust deeds heretofore or hereafter executed by the department for such allotments are hereby declared to pass the title in fee simple, or such mixed bloods upon application shall be entitled to receive a patent in fee simple for such allotments; and as to full bloods, said restrictions shall be removed when the Secretary of the Interior is satisfied that said adult full-blood Indians are competent to handle their own affairs, and in such case the Secretary of the Interior shall issue to such Indian allottee a patent in fee simple upon application.

The amendment in 1907 expanded the act's scope. The wording of the act was changed from "allotments . . . now or hereafter held by adult mixed blood Indians" to "allotments . . . herefore or hereafter held . . ."

The effects of the Clapp act were immediate and devastating. It led to what Folwell called a "saturnalia". The following account indicates that that characterization was not overstated.

> There is no proof of a conspiracy for taking advantage of the Clapp rider of 1906, but there is abundant evidence that some persons had been watching the progress of the legislation and getting ready to do business under it. In fact, enterprising mixed-bloods and white residing on or near the reservation had actually begun operations before the passage of the rider. They started in by obtaining from Indians, both mixed-bloods and full-blood, mortgages running for ten years, with interest at ten per cent collected in advance, in considerations of a small advance of cash, ordinarily twenty-five dollars and, a promise to pay two hundred and seventy-five dollars when the Clapp rider should become law. These mortgages were multiplied rapidly after the Clapp rider actually took effect. In the course of three weeks, from June 21 to July 16, some two hundred and fifty mortgages were recorded in Becker County alone. The first use of the money received by many of the Indians was to buy whisky and beer at Detroit and get drunk on it. The next was to buy all sorts of useless trash, broken-down horses, worn-out buggies, and even aged pianos. Many Indian families encamped near Detroit, weltering in a frenzy of debauch.
>
> The main purpose of the Clapp rider of 1906 was not to enable certain persons to lend money to Indians at high interest; these persons were out for the Indians' land. Their next proceeding was to convert the mortgages taken into deeds, thus acquiring the lands at prices ridiculously low, averaging five dollars an acre, according to the superintendent of the White Earth Indian agency, for land worth twenty-five. Purchases from adult mixed-bloods might be strictly legal, even though they

> were not legally competent to sell. In utter violation of law, land sharks from near and far bought allotments of full-bloods and took their deeds and had them recorded. Such deeds were accompanied by affidvaits that the allottee was an adult mixed-blood Indian. Some operators did not scruple to obtain conveyances from minors, also reinforced by affidavits that the grantors were of full age. Ignorant Indians were fleeced, not merely in the amounts of money paid or promised them, but also in the kinds of money. Buyers of land gave them tokens of tin redeemable only in duebills, which storekeepers and saloon-keepers cashed at a discount, the heavier because they were marked on their face "non-negotiable". The greater number of Indian allottees presently got rid of their money in Indian ways, but some intelligent mixed-bloods used theirs as well as white people would have used it under the circumstances. The "saturnalia" was over in a few months, but land speculation continued long afterwards, as first purchasers were obligated or pleased to sell. One investor from Iowa, president of a bank at Ogema, acquired some eighteen thousand acres.

Such a blatant swindle could not fail to arouse at least a few fair-minded persons. W.K. Moorehead was such a person and as a member of the United States Board of Indian Commissioners was informed of poor conditions at White Earth in 1909. After requesting and receiving an appointment in the regular Indian service he went to White Earth to view the conditions personally.

He found that nearly all the Indians were sick or diseased and that they had lost the major portion of their property. In a matter of weeks he had affidavits relating to over a million dollars worth of property that had been wrongfully taken. So damning was this information to the land and lumber interests that Moorehead found it necessary to make his departure from White Earth at night and by stealth.

This initial report and Moorehead's persistent manner finally resulted in a further investigation. Moorehead, together with an experienced Indian investigator, Edward B. Linnen, returned to White Earth to continue the investigation. Their report showed the following: 1) Ninety percent of the allotments to full-bloods had been sold or mortgaged. 2) Eighty per-cent of the reservations whole acreage was in private hands. 3) Full-bloods received only ten percent of the value of their land. 4) The physical conditions were intolerable with about sixty percent of the Indian population suffering from tuberculosis.

It was this report that prompted the initiation of possibly three thousand law suits and the granting of some relief to the Chippewa of White Earth. The results of these law suits, either by court judgment or by settlement, would have to be considered in determining the validity of any claims that could arise at the present time.

Since the Clapp Act applied only to mixed-blood Indians the important question became who was a mixed-blood? The question of blood quantum was eventually litigated. The United States position was that unless a person had at least one-half white blood he was not a mixed blood. The circuit court rejected that position and held that any Indian having any identifiable quantum of other than Indian blood was a mixed blood for the purpose of the Clapp Act. This interpretation was upheld by the United States Supreme Court.

The question of who was a mixed blood created so many problems of title that the Congress was forced to act. In 1913 an act was passed that provided for the preparation of an official roll of all mixed-blood Indians at White Earth. The roll was to be prepared by a two person commission, appointed by the Federal District Court Judge and was to be a public document.

The 1913 act was modified slightly in 1917 to provide, in part, that enrollment of an allottee on the blood role would not be evidence of the blood status of a relative who was involved in a suit before or during the preparation of the roll.

While the accuracy of the roll may be in some doubt as it was to the immediate advantage of any full-blood Indians to assert that they were of mixed blood, the reliance placed in the roll has been total. The title of several hundred thousand acres rests on this blood roll. Attesting to its importance, it is still a major reference available at the Register of Deeds office in the counties where White Earth is located.

[NOTE: "Business and Real Estate Issues of Indian Law--1982, Title Examination of Indian Lands, " by John E. Jacobson and Mariana R. Shulstad, attorneys at law, Office of the Field Solicitor, Department of the Interior, St. Paul, submitted by Mr. Wadena has been retained in committee files.]

Senator **Andrews**. Does either of your friends wish to add anything to your testimony?

Mr. **Wadena**. Yes, he would like to say something.

Mr. **Heisler**. Mr. Chairman, I would like to comment on the structuring and the concern of what the White Earth Reservation tribal government has proposed in their settlement negotiation meetings with the county commissioners of Becker, Mahnomen, and Clearwater Counties, as well as the county attorneys. The meetings basically fell apart——

Mr. **Alexander**. Please, use the mike. They cannot hear you in the back.

Mr. **Heisler**. I am sorry. The meetings basically fell apart when the White Earth Reservation presented issues that concerned their tribal membership. The issues that the non-Indian communities wanted to resolve were the land claims and the bars to further mortgages or further sales of their property.

It must be understood that the heirs on White Earth are as severely affected at this point in time, as they were 70 years ago, from the loss of that land. Loss of that land is not the No. 1 issue to those Indian heirs at this time. That is the information that the tribal government was trying to lay on the table for open discussion, so that everyone would understand that there are other, more pressing issues on the White Earth Reservation than the land claims.

The land claims are an issue of the farmers and the non-Indian interests who have a business. The majority of the Indians on the White Earth Reservation do not have businesses; do not have farms to sell. The concern of this tribal government is that we have a fair settlement that brings justice and provides justice to those heirs and to the members of the White Earth Reservation that do not have a farm worth $1 million to sell; those heirs who are not in a position to live basically from the land that they once had.

I would like, at this point, to refer to the many, many congressional records and hearings that have been made on the issue of White Earth. The first Congressional Record was made in 1884. It is nearly 1984, and this issue on White Earth land claims has been going on for approximately 100 years.

One of the pertinent issues is, in several land investigations, the Clapp Act itself. We have a history of Minnesota where Folwell calls it "the blackest pages of Minnesota history," which details the fraudulent taking of tribal lands. It is a part of our history. What we are asking this Senate committee to do is to repair that injustice, not to simply say we have to settle a land issue because it prevents the further sale or makes further harm to people who now are holders of that property but may not be legally, properly vested with that title.

I would like to make one other statement. If you look at the congressional records—and we can go back to the Nelson Act, the Steenerson Act, the Clapp Act—and in the Congressional Record which is in the House report, in 1911 it states specifically in here that the Clapp Act was nothing but a vehicle by which the timber interests could fraudulently get access to the timber allotments which before 1905 were unavailable to them. Subsequently, the

Clapp Act was passed. Therefore, the timber was able to be reached.

It is that kind of history that we are asking this committee to observe. That is not simply an issue of title. We are talking about the fraudulent taking of tribal lands.

Thank you.

Senator **ANDREWS**. Thank you very much. We appreciate your testimony.

[Subsequent to the hearing the following information was received for the record:]

SUMMARY OF EVENTS WHICH LED TO THE LOSS OF THE WHITE EARTH INDIAN RESERVATION IN THE STATE OF MINNESOTA

by Virginia A. Rogers

Date	Designation	Explanation and Result
1855	Treaty	The Chippewa Indians of Minnesota ceded all their land in the State of Minnesota, reserving tracts for each band as reservations.
1867	Treaty	This treaty established the 837,120 acre White Earth Reservation for the consolidation of all the Chippewa in Minnesota. Indians who moved to the White Earth Reservation from any of the other seven reservations were to receive certificates for 40 acres of land for each 10 acres cultivated up to 160 acres in all. This land was to be tax exempt and inalienable without the consent of the Secretary of the Interior and then only to another member of the Chippewa Tribe.
1885	Resolution	A group of white settlers in the Red River Valley of Minnesota (which adjoined the White Earth Reservation) adopted a resolution demanding the opening of the Reservation to white settlers. This was the beginning of the push by settlers and timber companies to open the reservation to non-Indians.
1885-87	Opposition	Bishop Henry B. Whipple of the Episcopal Church on behalf of the Indians, wrote to every Senator and Representative and each head of department, opposing the opening of the reservation, and went to Washington at his own expense to intervene with President Cleveland. He was not successful.
1887	Investigation	This was the first of three long and costly investigations of conditions on White Earth. There were continual smaller investigations between 1887 and 1920. This investigation was apparently instigated by Agent Timothy Sheehan. He wrote several letters to the Department of the Interior accusing reservation employees and various residents, of wrongdoing and requesting their expulsion from the reservation. Testimony before the United States Committee on Indian Affairs started on March 8, 1887. The result was 573 known printed pages of testimony in which witnesses elaborated on supposed mismanagement of affairs at White Earth. The purpose was to find out if Indian Agents and their subordinates had abused their authority or neglected their duty. The testimony fully corroborated the fact that they had. The hearing was adjourned after three

Date	Designation	Explanation and Result
		months and apparently was never recalled. There are no known results from this investigation.
1887	Dawes Act	Also called the General Allotment Act, this bill provided for allotments of 1/4 section to each head of family, 1/8 section to each single person over 18, 1/8 section to each orphan and 1/16 section to each single person under 18. These allotments were to be on agricultural land only, reserving the pine lands for the general use of all Indians.
1889	Nelson Act	Established a commission to negotiate the cession of all the Chippewa lands in Minnesota except for the White Earth and the Red Lake Reservations. A fund was to be established for the use of all Indians from the sale of lands ceded and land not needed for allotments. This act also included the ceding of 4 townships on White Earth of prime timber land, which it was said, was not needed for allotments.
1889	Dead & Down	Congress passed an act permitting the President to grant permits to Indians to cut and sell dead and down timber on the reservations with the proceeds to go to the Indians. This act marks the beginning of the timber scandal on White Earth.
1891	Amendment	The General Allotment Act was amended by Congress to give allotments to all of 1/8 section (80 acres). These allotments were still to be agricultural land only, the pine still reserved for all.
1897	Rider	Congress passed a rider which allowed the Chippewa of Minnesota to sell dead and down timber from their ceded lands (lands ceded under the Nelson Act). This opened up for logging all the Indian land in Minnesota. Lumber companies obtained permits in the names of Indian allottees and logged living timber as well as dead and down. It was estimated that 5% of the timber logged was actually dead and down.
1899	Suspension	Congress suspended the logging of dead and down timber due to public pressure over the illegally cut timber and the literal scalping of the pine lands.

Date	Designation	Explanation and Result
1900	Dead & Down	Logging of dead and down was resumed for a short time and again suspended for the last time. The lumber companies had to find another way to get the timber.
1902	"Dead Allotment Act"	Congress enacted a law allowing the sale of inherited interests by heirs if approved by the Secretary of the Interior. This law marked the first inroad into the reservation for outsiders to acquire land as well as timber.
1900's	Allotments	During the years 1901-1914, 5,154 Original Allotments were granted on the White Earth Reservation of 80 acres of agricultural land to each Chippewa Indian.
1904	Railroad	The Minneapolis, St. Paul and Sault Ste. Marie (the Soo Line) built a railroad through the western tier of townships on the White Earth Reservation. Along this line 5 stations were located and town sites laid out on land acquired under the "Dead Allotment Act". These towns were inhabited by non-Indians and became the centers of agitation for the release of more Indian lands to white settlement.
1904	Clapp Rider	This rider authorized the Chippewa in Minnesota with the consent of the Secretary of the Interior to sell timber on their allotments. Timber on the allotments of minors could be sold by their fathers and mothers or by Indian Agents. Of course there was very little timber on the agricultural land which had been allotted.
1904	Steenerson Act	Four days after the Clapp Rider became law, the Steenerson Act was introduced. This act authorized the President to make additional allotments of 80 acres to each Chippewa Indian residing on the White Earth Reservation and removed the restrictions against allotting only agricultural land. After all available pine land had been allotted it was discovered that there was not enough for each Indian; about 500 of them never received additional allotments (even though the four ceded townships had supposedly not been needed).
1906	Clapp Amendment	This amendment completely removed any restriction on the sale of allotted lands by mixed-blood Indians on the White Earth Reservation

Date	Designation	Explanation and Result
		and allowed full-bloods the same privilege if approved by the Secretary of the Interior.
1906	Burke Act	This act authorized the issuance of Fee Patents to White Earth Allottees without application by said allottees.
1910	Probate Act	This act provided that the Secretary of the Interior should ascertain the legal heirs of allottees whose allotments were still in trust at their death.
1910	Investigations	Two comprehensive investigations were conducted around 1910. The Linnen & Moorehead investigation into the land frauds on White Earth, particularly the sale of allotments by full bloods, recommended bringing law suits by the Federal Government in their behalf to recover lands or moneys lost by them through illegal sales. The Hinton blood status investigation resulted in a role giving the blood quantity of each allotted Indian.
1911-12	Investigation	An investigation of the White Earth Reservation by a joint committee of the Department of the Interior and the Department of Justice was carried on during 1911 and 1912 in Washington, D.C. and on the Reservation itself. This investigation produced thousands of pages of printed testimony exposing every nature of land fraud, collusion and wrongdoing on White Earth. The committee's summary is an indictment of the laws and illegalities which lead to the stripping of the White Earth Reservation.
1913	Blood Roll	An act to prepare a new White Earth blood roll was passed authorizing a commission to investigate the blood quantities of each Original Allottee on White Earth. Ransom J. Powell worked three years on his roll which became the "Powell Roll" or the "1920 Blood Roll". On Powell's roll 740 Indians who had been classed by Hinton as full-bloods, were changed to mixed-bloods. Of these 740 the government brought suit on behalf of 110 reconfirming them as full-bloods. This left 630 still classed as mixed-bloods (a potential 100,000 acres of land).
1914	Court Cases	During this period the courts concluded that the term "mixed-blood" in the Clapp Amendment

Date	Designation	Explanation and Result
		meant that a mixed blood was any Indian with any admixture of white blood.
1915	Solicitor's Opinion	The Solicitor for the Department of the Interior gave the opinion that by virtue of the Clapp Amendment, title passed in Fee to White Earth Mixed Bloods and that the Secretary of the Interior had no jurisdiction over them, including determining heirs.
1920	Federal Approval of Blood Roll	Judge Page Morris, senior Judge of the United States District Court in the District of Minnesota gave Federal Approval to the 1920 Powell Blood Roll. The Department of the Interior is still bound by this Federal Approval and must use it instead of the Hinton Roll.
1920	Fee Patents	The supervisor in charge of the White Earth Reservation was advised to issue Fee Patents to all living adult mixed blood Indians on the White Earth Reservation, thereby taking their allotments out of trust status and making them taxable. Much land was thus acquired by the counties for tax forfeiture.
1927 & 1931	Cancellation Act	This act allowed the cancellation of Fee Patents which had been issued to allottees on White Earth, in cases where they had been issued without application or consent. Between the Burke Act of 1906 allowing issuance of Fee Patents without application, and the cancellation the land had already been lost.
1978	Solicitor's Opinion	A reconsideration of the Solicitor's Opinion of 1915 which absolved the Secretary of the Interior from any jurisdiction over a White Earth Mixed Blood, resulted in a reversal of opinion. The Secretary of the Interior was instructed to determine heirs for any Allottee on the White Earth Reservation who had died with property still in trust. Probates which have not been done for 63 years must now be done.
1855- 1983	Results of Federal Legislation	This series of acts and laws passed by the United States Congress has resulted in the loss of 93% of the White Earth Reservation lands, (now owned primarily by non-Indians, counties and the State of Minnesota) and the continued impoverishment of the White Earth Chippewa.

Senator ANDREWS. Now, I would like now to hear from our good friend and colleague, Senator Boschwitz. You can stay up here or you can go down there, Rudy, wherever you want to be. In fact, we will turn over the hearing to you if you want to be an inquisitor. We are glad to have you here, and we are sorry that you were feeling a little under the weather, as Senator Durenberger pointed out, but we are glad to have you here now. We have put your prepared statement in the record, following Senator Durenberger's, and we would like to have you sum up any comments you might have at this point.

STATEMENT OF RUDY BOSCHWITZ, A U.S. SENATOR FROM THE STATE OF MINNESOTA

Senator BOSCHWITZ. Well, Mr. Chairman, my statement is quite brief. I will stay for more of the hearing but I have to go over and testify at a hearing on enterprise zones, which concerns the northeastern part of our State. Therefore, I will stay as long as I can, but then I am going to have to go.

Mr. Chairman, I wish to thank you for conducting these hearings, and also the other members of the committee for scheduling it together with you. It has been some time ago that I first contacted the chairman about the possibility of hearings, and I am extremely grateful that they have come about.

I also want to thank our colleagues in the House who scheduled a similar hearing yesterday. Having these hearings on consecutive days was very convenient for our constituents who have come out from Minnesota.

The chairman of the White Earth Indian Band spoke of the history of this issue, and I am sure that it has been repeated several times during the course of the hearing, but since my statement is rather brief I may repeat some again. Mr. Chairman, the land claims issue at White Earth is extremely complex, and that complexity stems from the actions of Congress and the executive branch over the last 100 years or so.

Because we are responsible for these problems, along with our predecessors, we must also take responsibility for finding a solution. I agree with the chairman that a legislative solution probably is the better way, rather than litigating it through the courts. That would probably take years and years and cost a good deal of money, as was alluded to.

I am sure others testifying today will give a more detailed history of the problem. Very briefly, however, I can say that much of the problem stems from conflicting congressional action going back to the Nelson Act of 1889 and the Clapp Act of 1906. The latter provided that adult mixed-blood White Earth Indians should have their allotments in fee simple rather than held in trust, and subsequent court decisions, including the *Zay Zah* decision, have held that the breaking of the trust arrangement without compensation was improper and therefore illegal.

The situation is further complicated by the various types of claims, including claims due to the improper tax forfeiture and unapproved trust land sales, sales by underaged allottees without the approval of the Department of Interior, all of which occurred far before the participants who we have with us today came on the scene.

Recognizing that the only realistic solution to this problem is congressional action, Congressman Stangeland, Senator Durenberger, and I introduced legislation to settle the problem. We introduced this legislation based on two basic premises: First, no private landowner should lose his property or continue to have clouded title. That is very important, Mr. Chairman, that people who really did not participate in any of this on either side should not now have their titles clouded. Second, compensation should be provided for the heirs who lost their right to challenge title to disputed lands by this legislation.

We were hopeful that the introduction of this legislation would serve as a catalyst to get interested parties together or, at the very least, to have alternatives offered. To this date this has not happened, and I really encourage the various participants to get on with negotiations. Despite longstanding requests, we have not received the opinions of the Department of Interior on these bills. I do not say this to cast blame or point fingers, but only to point out we have not been very successful in moving toward a resolution.

This is not for lack of interest, however. As the committee knows, various individuals, delegations, and Government officials have come out here from Minnesota to discuss this issue. One of the first things in my term of office, Mr. Chairman, was a meeting up in Detroit Lakes about this at which some folks, perhaps some of those in this room, were very upset, to put it mildly. I can not blame them, inasmuch as titles that they have felt were their own and land for which they have often paid had clouded titles.

Progress has been slow and a source of frustration for the people involved, and certainly for us who are trying to help in the process of negotiation. However, I do believe these hearings can be a new catalyst. I am very pleased that seemingly all the interested parties, from the White Earth Tribe to the local landowners, the county, State, and Federal officials, are participating. If we can help them, and if we can in some way be mediators of negotiations while you are here, we would be very happy to do so.

However, I do believe these hearings can be a new catalyst, and I am pleased that everybody is here. My staff and I have participated in meetings with representatives of all those interests. Most recently a meeting took place in my office between a representative of the tribe, the staff of Arlan, Dave, and myself. I am encouraged by the interest, and will continue to do all I can to resolve it. I am hopeful with this committee's help and the help of all the people in the room, faster progress toward resolution can be made.

Mr. Chairman, I really believe that progress has been a little bit slow. We are used to that down here, but when people's titles are involved I think that progress should be as quick as possible. I look forward to progressing with this legislation for the purpose of clearing titles and getting the proper compensation for the people involved, on all sides.

Senator ANDREWS. Thank you, Senator, for your contribution and for your interest in this matter.

Our next witness is Sidney Mills, Director of the Office of Trust Responsibilities, BIA, Department of the Interior here in Washington.

Let me say this: In order to get these hearings back to back, I also had a problem because I am a conferee on the DOD appropriations bill. That conference is going on, and my coach turned into a pumpkin about 15 minutes ago. I have to get back there, and one choice is to stop the hearings and do them this afternoon, which means some of your county government representatives and your local interest representatives have their travel plans inconvenienced. However, because we put them today to be convenient, what I am going to do is turn over the questions to Paul Alexander, our staff director, to carry on so it does not disrupt your schedules and so that we can make a complete record.

Senator, you are welcome to stay as long as you can. You might have some very cogent questions to ask of these gentlemen from the administration, so you may participate as one of the members of this committee. I tell you, as a neighbor that is the least I can do to my good friend from Minnesota. Therefore, if you are able—and I know you have some problems with scheduling, too—you are welcome to stay as long as you like and ask whatever questions you might have.

However, I think in the interests of the local people involved, you would much rather have the hearing keep going than to have to go into a recess until this afternoon. Therefore, without any further ado, Mr. Director, we would be glad to hear your testimony. Paul, you can steer it.

Senator BOSCHWITZ. Senator, I will stay for a while.

Senator ANDREWS. Fantastic.

STATEMENT OF SIDNEY L. MILLS, DIRECTOR, OFFICE OF TRUST RESPONSIBILITIES, BUREAU OF INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR, ACCOMPANIED BY HOWARD PIEPENBRINK, OFFICE OF TRUST RESPONSIBILITIES, BIA, AND MICHAEL COX, SOLICITOR'S OFFICE, DEPARTMENT OF THE INTERIOR

Mr. MILLS. Thank you, Mr. Chairman.

Mr. Chairman, I am pleased to be here to present the Department of the Interior's views on S. 885. On my right I have Mr. Howard Piepenbrink, who is with the Bureau of Indian Affairs, Office of Trust Responsibilities; on my left is Mr. Michael Cox, our attorney from the Solicitor's Office of the Department of the Interior.

My prepared statement is for the record, sir; and I will just take a few minutes. S. 885 proposes legislative solutions to this most complex matter. We do, however, have serious concerns with S. 885 as drafted. Our preliminary cost analysis of the bill estimates a potential cost of $35 million, and that figure has been mentioned before. In summarizing the breakdown of this total estimate, we have found that compensation could total $12 million. That figure has also been mentioned Mr. Chairman. The remaining costs would be administrative.

The most difficult task that we have found in S. 885 is determining the current heirs eligible to share in the award. Because the Department believed it had no continuing trust relationship to adult mixed-blood White Earth Chippewas, the lack of geneological records and documentation over the past 60 years is severely hampering our efforts to determine and locate heirs.

Mr. Chairman, we have heard this morning of other parties that are willing to try to work out a solution to this complex issue. The Department of the Interior is also willing to work with this committee and with other parties in trying to reach a solution.

In the past several years these two gentlemen here with me have had a lot of dialog with our field offices and with other interested parties in the field. They are well prepared today to answer any questions that you would have, and they will be assisting me. If you have any questions, Mr. Chairman, we would be happy to reply.

Senator BOSCHWITZ. It is not clear to me from your testimony: You say that much has been done by the Department of the Interior to try to resolve the claims, and you have had some difficulty with the geneological problems, that good records were not kept so you can not tell who and where the heirs are. That is a very, very general statement. Can you be more specific with respect to what the Department of the Interior has done?

Mr. MILLS. Yes, sir; Mr. Chairman. Again, as I mentioned, Mr. Michael Cox has been working close to this. I would like to have him respond to that, please.

Senator BOSCHWITZ. Fine.

Mr. COX. Senator, as you know it was not until the *Zay Zah* opinion in 1977 that the Department realized it had a continuing responsibility to adult mixed-blood White Earth Chippewas. Prior to that period of time, the Department was of the legal view that we no longer had any probate responsibilities to adult mixed-bloods who had lost their allotments either through tax forfeitures or through sales.

Therefore, the Department, after that decision, realizing that it had this continuing responsibility, began to do a thorough investigation of all of the allotment files for the White Earth Reservation, in order to know the parameters of the problem. To our chagrin, we have learned that we have a very serious, serious problem. It was not until probably last year that most of the work completed, at least reviewing all of the allotment files and cataloging the claims into their various categories and subcategories. Now, we have a very good idea of the scope of the problem and what it is going to require to resolve.

As you know, we do have a trust responsibility to Indian tribes, individuals, and their resources. Our first reaction after the *Zay Zah* opinion to determine what our legal responsibility was to the allottees and their heirs. Of course, as an attorney in the Division of Indian Affairs, I had to review the *Zay Zah* opinion. We had to determine whether or not we should be recommending litigation in order to recover property, based on the *Zay Zah* opinion, on behalf of the heirs or those allottees who are still living.

We had a number of meetings with the Justice Department to review the claims. At a meeting last year a decision was reached by both Interior and Justice that it would be inequitable to bring quiet title actions against third parties who purchased those allotments in good faith. The solicitor for the Department was of the view, however, that the State and the counties still owned tax-forfeited lands and that we should perhaps bring quiet title actions against the State and the counties.

A recommendation was made in May of last year to the Justice Department. No action has been taken, I think in large measure because of the bills that have been introduced by the Minnesota delegation, to give the Department a chance to review the bills and decide whether that would be the best course of action. I think we are of the view here and are in agreement with the rest of the witnesses that this problem is deserving of a legislative solution; that litigation will not resolve the problems; that this administration is not willing to litigate each and every claim on the White Earth Reservation, and that the only way in which the problems are going to be resolved is through some legislative solution.

As Mr. Mills has testified, one of the serious problems of course is that there is a very high administrative cost. That problem, of course, is because of a 60-year period in which the Department felt or believed it no longer had any responsibility to those adult mixed-blood White Earth Chippewas. As a result, our records simply ceased once their property was lost or went out of trust status.

In order for us to implement this legislative proposal, we are required basically to determine the heirs and locate those individuals. We have seen a couple of probates that have been done, that is, the probating of an Indian estate that was probated originally in a county court. Since it is our view that a Federal probate was required, the Department has begun the process since the *Zay Zah* decision to attempt to reprobate those estates.

We find that heirs are scattered throughout the United States and outside the United States. Many of them cannot be located or have not been able to be located. Many of those individuals who would be entitled to compensation under the bills are certainly no longer members of the White Earth Band and have no affiliation with the tribe. Our estimates would be a payout of about $300 to $400 per person. You may have up to 200 heirs who would have an interest in any one allotment and would be entitled, of course, to share in some sort of a compensation.

What we are trying to do in analyzing the bill is to see if there is another less costly administrative way of handling this particular matter so that you are not spending two-thirds of the appropriation simply on trying to locate people and publish notices in newspapers. We are estimating $3 million simply to carry out the provisions requiring notice by publication in newspapers, where we would have to list entire lists of allottees, their names and legal descriptions. We are looking to see if there are other ways of lowering those types of costs so that perhaps more would be paid out or go toward settling this particular problem.

The other complicating factor, Senator, is that since we do have a trust responsibility to the Indian tribes and their resources, we are in sort of a difficult situation. The bill is viewed by many of the Indian people as being an anti-Indian bill, a relief bill for non-

Indian property owners. They are aware of the history of this particular problem and, of course, feel as if the Department's responsibility is to them. As a result of certain legal decisions, we would be able to proceed against landowners or the State or the county to recover some of this land.

However, I think it is the view, as I have said earlier, that that is not a total solution to the problem and that some sort of legislative solution is inevitable and is going to be required. I realize that the landowners who hold this property think this matter has been going on far too long and should have been resolved a long time ago. However, as I pointed out, it has been really only since 1977 that we became aware again of the serious title problems. It has taken us 3 to 4 years to simply compile the data necessary to know how bad the problem is and what it is going to take to completely resolve this problem.

Senator BOSCHWITZ. Well, I must say that 6 years does seem to be quite a bit of time, but everybody seems to agree that a legislative solution is in order. You have pointed out some of the difficulties that the bill has, or at least one difficulty—the difficulty of notice, of finding the heirs, and the cost of doing so.

Have you come up with some options or alternatives? Have you advised us of some way to overcome these problems? The bill is put forward as the basis for negotiations. There are some aspects of the bill which I think can be improved upon, as well. However, what are the options or alternatives that we should pursue?

Mr. COX. Well, I think one possible option would be—or, at least, I think a concern of this Department and the administration—that there perhaps be a State contribution to this settlement proposal. I know the parties have spoken, that they believe this to be a Federal problem, and in large part it is a Federal problem. However, it is our view that it is not simply a Federal problem.

Senator BOSCHWITZ. Well, you are going to do more than come up with telling me that we ought to get the State involved. That will just add another year or two to it, probably, and you apparently want to reduce your costs, for whatever reason. However, that is not an alternative that we are going to look upon as being the one that is going to move this matter forward. What other alternatives do you have? You have been sitting around with this for 6 years, and you tell me the State should be involved?

Mr. COX. Well, we certainly have not been looking at legislative solutions for 6 years, Senator. That is correct. Certainly, we have thought of this type of a solution. This is certainly the most obvious one, and one in which we would clear the titles immediately and provide compensation to the heirs. Perhaps this is the only way in which this matter can be resolved. I can not say that we have alternatives at this time. We did look at other approaches. This one, perhaps, is the most equitable.

There are possibilities of statutes of limitations to give Indians the opportunity to pursue these claims if they feel that they have a claim and they want to pursue litigation. Right now, of course, there is no statute of limitations on bringing quiet title actions that applies to the United States or to the Indians. That would at least provide an option for them.

Since the *Zay Zah* decision, I think it was stated by the chairman of the White Earth Band, there has not been litigation by the Indian heirs attempting to recover property. Probably in large measure that is because of the numerous heirs that would have an interest in the property. Many people do not know they have a potential claim. That is a possibility, anyway, a statute of limitations sort of approach with some sort of compensation to the band or to the individuals.

This bill, of course, is a taking by the United States in that we are extinguishing a potential claim that the Indians have, and obviously compensation is owing as a result of that. We need to explore some other ways, perhaps, of just seeing if there are ways of accomplishing the same purposes as S. 885 but with, again, less administrative cost to the Federal Government, a way in which it could be done easier. I would imagine that with this type of a bill we are still talking about 5 to 10 years in order to actually locate people, make payouts, and accomplish the probating of estates.

Senator BOSCHWITZ. Is it your opinion that the titles have to be clouded for that entire period? I would think not.

Mr. COX. No; the titles would not be clouded as a result of this legislation. They would be cleared upon enactment.

Senator BOSCHWITZ. They would be cleared and then the department and others would seek to find and properly compensate the heirs in that way.

Mr. COX. That is correct, sir.

Senator BOSCHWITZ. I assume that would be the procedure.

Does the department intend to come up with a form of bill? Have you thought through what format the bill should be, and will you present to this committee and to the Senators involved your own form of legislation?

Mr. COX. We will be meeting next week with the Office of Management and Budget. They are very interested in the bill. They want to discuss it and see what we can deduce. We are just educating them on the problems at White Earth, and we will be most happy to work with the committees and the interested parties in attempting to come up with a solution. Whether we will have our own bill, I can not say at this time, but we certainly will use S. 885 as the vehicle, as the catalyst, as has been mentioned before, and hopefully can make some constructive recommendations.

Senator BOSCHWITZ. Paul.

Mr. ALEXANDER. In the earlier testimony it was indicated that settlement discussions were stalled and there was a desire for some leadership from the Federal Government. Mr. Mills, can we expect the Department of the Interior to provide any service other than technical analysis of the legislative proposals? Can it provide any mediation? Can it provide any leadership in the negotiation process?

Mr. MILLS. I think, as I mentioned earlier, the Department wants to work with all parties concerned in trying to solve this issue.

Mr. ALEXANDER. To be more specific, let me tell you what concerns me. The President last year vetoed the Pequot land settlement in the State of Connecticut. That has since been repassed, and the one major item of contention was that the Department of the Interior, in your view, was excluded from the original negotiations in the terms of the settlement. One of the commitments that the chairman made when the Pequot land bill was passed was that the committee would look forward to the Department of the Interior being actively involved in settlement negotiations. The committee considers that a critical element

Now you have to tell me something more specific than a technical analysis of the bill.

Mr. **Mills**. Well, I think the Department in the past has shown that they have gotten involved in settling rather than litigating, and I think we would take that step again. Whatever resources we have, we would put there, beyond technical.

Mr. **Alexander**. Well, one of the witnesses, earlier this morning, testified that they thought it would be a good idea if a point person, or a task force, or some entity from the Department be made available to help move the negotiations along, perhaps like in the Maine settlement. Do you have a view on that proposal which was made this morning?

Mr. **Mills**. I do not know whether we would actually take the lead but we do have, in the White Earth issue right now, the Deputy Assistant Secretary himself involved in taking the lead within the Department.

Mr. **Alexander**. Could you supply for the record specifically what the Department would be willing to do in response to the suggestion made by the State officials earlier this morning, the one that I just related. We will send you a copy of that page of the transcript.

Mr. **Mills**. I would be happy to.

[Subsequent to the hearing the following information was received for the record:]

The Deputy Assistant Secretary—Indian Affairs (Operations) has taken the lead for the Department in attempting to achieve a legislative solution to this problem.

Senator **Boschwitz**. Is Mr. Fritz willing to take some leadership in this matter? He is a very efficient fellow, from my dealings with him in the past.

Mr. **Mills**. Mr. Fritz mentioned to me last night that he does, within the Department, Senator, have the lead on this one, and that he is willing in the near future to meet in the field with parties concerned to start things moving.

Senator **Boschwitz**. Well, let me second the suggestion made by staff, and that is that there should be some type of a task force or some type of lead taken. The Department of the Interior, of the parties involved, probably is most neutral and really should undertake to move this thing along and mediate it. We will be as cooperative as we can be, and I would be happy to be part of those sessions. Please tell Mr. Fritz, with whom I have had some very satisfactory sessions before. He drives things to conclusion and this should be driven to conclusion.

I like your suggestion about, not so much of a task force, because a task force involves so many people they will all slow it down, but that he be a point man, as you say, or a point person to drive this thing to conclusion so that we can do it within our lifetimes here.

Mr. **Alexander**. You mentioned in your testimony the cost and the administrative burden, as apparently the sole objection that you have to S. 885. Is that a correct impression, or do you have other problems with S. 885 as a solution?

Mr. MILLS. I would like to have Mr. Cox respond to that, please.

Mr. COX. That probably is, I think, the most serious problem: Is there a way to do this in a more economical fashion—more economical, not in the sense of compensation being paid out to the heirs, but in our costs. I think that is the primary concern. There are some technical sorts of amendments I think that would probably be in order to clarify the bill, but those are not of any great significance.

Mr. ALEXANDER. In your professional opinion, Mr. Cox, if this thing were fully litigated, do you believe that the allottees have a good or a bad case for the return of their land?

Mr. COX. I think, as to those allotments which were lost as a result of county taxation, I would say that those are probably the strongest cases since the case law is fairly clear. You have, of course, the *Zay Zah* opinion and another case, *United States* v. *Morrow* in 1917, which all hold that the Clapp amendment was not effective in removing the tax immunities.

As to the other categories, the most significant category of White Earth claims is not the tax forfeitures. It is the sales by minors without Secretarial approval. There is a problem, in that the State age of majority in the State of Minnesota, at the time I believe, was 18 years of age. Federal law has, and the Bureau of Indian Affairs treated adults to be 21. Many of the sales were made, apparently 75 percent, by women who were of the ages 16, 17, 18, 19, 20. As to those claims, it may come down to a question of whether one would follow the State age of majority or the Federal common law age of 21. That issue has not been litigated directly, so we cannot say with any degree of certainty what kind of success to expect.

As to the probates—that is, a county court exercising probate jurisdiction over trust assets—this is another issue that has not been litigated, so again we cannot say with any degree of certainty what success we would have, or the heirs would have, in recovering those properties.

Mr. ALEXANDER. For each of these categories, we would like, for the record, to have your best estimate of the number of acres involved and the number of potential heirs or descendants.

Gentlemen, we thank you for your time. The record will be open for 2 weeks, as the chairman indicated, and we will look forward to your written responses for the record.

Senator BOSCHWITZ. We really encourage the Department to take the lead in bringing this matter to a conclusion. It has been around, as we have all noted, for quite some time, and we need the help of the Department. I will talk to Mr. Fritz, and I trust that we can look forward to receiving that help.

I recognize as I listen to the attorney that this, as most other matters involving land, is complex. However, that should not stand in the way of seeking a solution to clear the titles and to provide for proper compensation for the people involved. Therefore, I really urge you on and urge you to move with all dispatch. A "point" person would be a very constructive idea, in my judgment.

It would be my hope that we could drive this entire matter to conclusion in this session, which means during the coming year, and not have to begin with hearings all over again in the next session, dragging it along some more. That would not serve the interests of anybody involved. Therefore, we solicit your help and we will talk to Mr. Fritz to engage that help to all possible degree. Thank you very much.

Mr. MILLS. Thank you, Senator.

Senator BOSCHWITZ. Thank you.

[The prepared statement follows:]

PREPARED STATEMENT OF SIDNEY L. MILLS, DIRECTOR, OFFICE OF TRUST RESPONSIBILITIES, BUREAU OF INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR

Mr. Chairman, I am pleased to present the views of the Department of the Interior on S. 885, the "White Earth Reservation Land Settlement Act of 1982".

S. 885 would provide for the settlement of all Indian land claims on the White Earth Indian Reservation by confirming and ratifying the past transactions giving rise to these claims and providing compensation to the heirs who would lose their right to challenge title to these former allotments and to obtain trespass damages.

Section 2 of the bill lists the categories of White Earth claims for which compensation would be owned. They include:

(1) Allotments which were tax-forfeited during the trust period;

(2) Allotments which were sold or mortgaged during the trust period by full bloods or minors without the approval of the Secretary of the Interior;

(3) Allotments which were sold or mortgaged during the trust period by administrators operating under authority from State courts; and

(4) Inherited allotments which were tax-forfeited, or sold by minors or full-bloods without Secretarial approval, or sold by administrators operating under authority from State courts.

Section 3 of the bill would ratify and confirm the transactions giving rise to the various types of White Earth claims.

Section 4 of the bill would authorize the Secretary to investigate all White Earth allotments to determine whether they fall within any of the listed categories of claims. Further, the Secretary would be required to publish in various newspapers around the country a list of allotments determined to fall outside the scope of such categories. Any person adversely affected by the Secretary's determination could appeal that determination within six months of the notice by publication.

Section 5 would provide compensation for loss of an allotment or interests therein at the fair market value of the land or interest as of the date of the illegal transaction, less any compensation received, plus simple interest at the rate of 6 percent per annum. In addition, the Secretary would be required to provide written notice of his compensation determination to the affected allottee or heirs as well as describing the basis for the determination and the applicable time limits for appealing such determination. If the Secretary determines that no compensation is due written notice need only be provided to those affected allottees or their heirs whose identities and addresses can be ascertained from existing Bureau records, otherwise notice would be accomplished by publication. Six months from the issuance of notice, the Secretary's determination would be final and conclusive unless a timely appeal had been filed. The Secretary must make a diligent effort to locate each recipient who is entitled to compensation. If a recipient cannot be located within 2 years of the compensation determination, the Secretary may, in his discretion, deposit such amount to the credit of the White Earth Band.

Section 6 would bar litigation to contest the validity of any of the types of claims described in section 2, except that an action may be brought against the United States contesting the Secretary's final decision on any administrative appeal provided for in sections 4 and 5 if the action is filed within one year of the final decision.

Section 7 would require the Secretary to prescribe regulations within 18 months of enactment of the bill.

Section 8 would authorize a $2 million annual appropriation for administration and compensation.

In 1889 Congress directed the Secretary to divide up the White Earth Reservation among the Chippewa members and to provide trust allotments to each. Trust patents were issued, most in 1902, 1907, or 1908, guaranteeing that the United States would hold title in trust for the allottee for 25 years free from taxation and subject to restrictions against alienation. As a result of subsequent executive orders and laws, these trust periods were extended indefinitely.

Allotment titles at White Earth, however, were immeasurably complicated by the passage of what is commonly called the Clapp Amendment of 1906, 34 Stat. 353, which purported to convert all trust patents held by adult mixed-blooded White Earth Chippewas to fee patents, thereby removing all restrictions as to the sale, incumbrance or taxation of such allotments. During the years immediately following the enactment of the Clapp amendment, many White Earth mixed-blooded allotments were placed on the tax rolls even before the 25-year trust period has elapsed. But such actions were voided when the United States Court of Appeals in *Morrow* v. *United States,* 243 F. 2d 854 (8th Cir. 1917), held that the mixed-bloods' trust patents carried with them a vested and constitutionally protected right to be free from real property taxes during the 25-year trust period which followed the issuance of the patent.

In 1977 the Supreme Court of Minnesota dispelled the commonly held belief of Department officials that the various extensions of the trust period by executive orders and the indefinite extension by the Indian Reorganization Act of 1934 had no effect on those White Earth allotments held by adult mixed-bloods. *State of Minnesota* v. *Zay Zah,* 259 N.W. 2d 580 (Minn. 1977) cert. denied, 436 U.S. 917 (1978) was a quiet title action brought against a deceased White Earth mixed-blood allottee and his heirs by persons who alleged that they had purchased the allotment from Clearwater County, after the county had claimed it as forfeit for the nonpayment of taxes. Neither the allottee nor his heirs had ever applied for a fee patent, or conveyed the land, or taken any other action from which it could be inferred that they consented to hold the allotment in fee simple status. The county had attempted to tax the land in 1931, but in 1947 had voided that action, apparently recognizing the *Morrow* decision's effect. In 1954, after the expiration of 25 years from the date of the trust patent, the county recommenced taxation, and when no taxes were paid by the allottee or his heirs, a tax judgment was entered in 1956. The lands were claimed as forfeit in 1961 and were sold to the *Zay Zah* plaintiffs in 1973.

The Minnesota Supreme Court affirmed the trial court's holding that the allottee's heirs had never been divested of title by the county. The court agreed with the defendants that the constitutionally protected rights of adult White Earth mixed-bloods included not only the right to tax immunity, but also the right to have their allotments held by the United States in trust. The court concluded that the trust status of Zay Zah's allotment "did not terminate (at the end of 25 years) but rather was extended indefinitely by the Wheeler-Howard Act of 1934." Therefore, both the purported tax forfeiture to the county and the county's subsequent attempt to sell the land to a private party were void. The Indians had a vested right to have the trust relationship continue, unless the Indians themselves consented to its termination.

The *Zay Zah* holding has given rise to a variety of potential title and damage claims on behalf of White Earth allottees. The Twin Cities field solicitor segregated the claims into a number of categories, the largest of which are:

(1) Allotments to full or mixed-blood Chippewas, which lands were never mortgaged or sold by the allottee or the heirs of the allottee and which were purportedly forfeited to the county for nonpayment of taxes. Title is now claimed by the State of Minnesota, the county, or a third person;

(2) Allotments to mixed-bloods where the lands were sold by the allottees prior to reaching the age of majority (21 years) and without approval of the Department of the Interior; and

(3) Allotments to full or mixed-bloods who died after the allotments were issued and whose estates were disposed of through county probate action without the court having the necessary jurisdiction.

S. 885 proposes a legislative solution to this most complex matter. We do, however, have serious concerns with S. 885 as drafted. Our preliminary cost analysis of the bill estimates a potential cost of over $35 million dollars to implement this proposal. In summarizing the breakdown of this total estimate, we find that the compensation awards could total some $12 million dollars. The costs of determining and locating heirs and probating the estates of White Earth allottees and their heirs could excess $20 million dollars. Newspaper notices could exceed $3 million dollars. The costs of processing administrative appeals challenging either the Secretary's compensation determination or his decision rejecting a claim are difficult to estimate.

The most difficult task which would be required by S. 885 is determing the current heirs eligible to share in an award. Because the Department believed it has no continuing trust relationship to adult mixed-blood White Earth Chippewas after passage of the Clapp amendment, the lack of genealogical records and documentation over the past 60 years is severely hampering our efforts to determine and locate heirs. We estimate that perhaps 8,400 estates are in need of probate. S. 885 requires the Secretary to provide written notice to all individuals entitled to compensation and further provides that the Secretary's compensation determination would become final six months from the issuance of notice to the affected claimants. The bill makes no provision for providing notice by posting or publication in the event that an actual notice cannot be accomplished. Thus, many compensation awards would never be final because of the inability of the Department to provide actual notice to an eligible claimant.

In view of the high administrative costs and the inherent administrative difficulties to implement a proposal such as that in S. 885, we believe we should explore the possibility of less cumbersome and more cost effective alternatives for an equitable resolution of these claims. We would be willing to work with this committee and other appropriate parties in developing an appropriate resolution.

This concludes my prepared statement. I will be pleased to respond to any questions you may have.

Mr. **ALEXANDER**. Our next witnesses this morning are Jim Sinclair, the assistant Becker County attorney, and Michael Kraker, also a county attorney. Gentlemen, would you please come up?

STATEMENT OF JAMES D. SINCLAIR, ASSISTANT COUNTY ATTORNEY, BECKER COUNTY, MN, ACCOMPANIED BY RAY WATTENHOFER, CHAIRMAN, COUNTY BOARD OF COMMISSIONERS; AND C.A. BOYER, COUNTY COMMISSIONER

Mr. **SINCLAIR**. Senator Boschwitz, we thank you for the opportunity to appear here. My name is James D. Sinclair. I am an assistant Becker County attorney.

Senator **BOSCHWITZ**. Do you have prepared testimony, by chance?

Mr. **SINCLAIR**. Yes, I do, and I have submitted that.

Senator **BOSCHWITZ**. Let me get my hand on it here, Jim.

Mr. **SINCLAIR**. Also appearing here with me are two members of the Becker County board, Mr. Ray Wattenhofer to my immediate right, who is the chairman; and Mr. C.A. Boyer to my far right.

In addition to being an assistant Becker County attorney, I have been in the private practice of law in Detroit Lakes for the past 17 years and specialize in the real estate area. Therefore, I have a perspective on this that is perhaps different than any of the other witnesses.

Prior to coming here I reviewed all of the title opinions that our office did on land located within the White Earth Reservation for the past 5 years. We found that the title to one-fourth of the tracts that we examined was unmarketable for some reason relating to the conveyance by the original allottees or their heirs. If that percentage would carry over to the rest of the reservation, that would mean that over 100,000 acres of land has unmarketable title. Excuse me, that is 100,000 acres of the privately owned land. The difference between my figures and the other figures that you might hear is that my figures often relate to tracts that appear to be clouded, although they are not listed in the claims that are being put forward by the department.

Over 85 percent of those unmarketable titles involve just two possibilities: the probate problem and the minor female between the age of 18 and 21. I want to approach the probate problem particularly, because I think it is the most serious one. Two-thirds of the problems involve probates.

For the past 65 years the Federal Government has refused to do probates on adult, mixed-blood heirs who died having allotments.

As a result, the State courts for those 65 years did probates. The buyers who bought land relied on those probates, and buyers continuously have relied on those probates. Then, just within the past 5 years, the department decided that they now do have the authority and the sole jurisdiction and, as a result, this problem has arisen.

I think that Mr. Cox estimated the cost of determining the heirs. If something is not done the cost has to be much greater than that because at the present time it is the Department's intention to determine the heirs of every adult, mixed-blood allottee who died during those 65 years, not just those who may have some claim but all of them, and that has to be 10 times the cost that he is estimating, just to determine the heirs of allottees who may have had claims.

Senator **Boschwitz**. He said $3 million. Do you think it will be 10 times that?

Mr. **Sinclair**. I think he said $20 to $30 million.

Senator **Boschwitz**. Oh, pardon me. I guess the $3 million was the advertising.

Mr. **Sinclair**. Just for the advertising, right.

If they go ahead—as the directive of the solicitor of the department was in 1979—and determine all of those heirs, they are going to have a much more expensive procedure. Not only that, it is a complete duplication of effort because the State courts made heirship determinations on a great majority of those cases. Not only did they make determinations, but they made their determinations at or near the time of the death of the allottee, and so had available the heirs of the allottee and people who personally knew the allottee. Therefore, the job was much simpler for them and they are much more likely to be accurate.

I was planning to talk also about some of the specific situations that people I know have had and their title problems. I have that in my written statement and I would encourage you to read that, because there are some really sad situations. I will not go into that now because there are people here who are in those problems, and they can tell you and I think they would rather have the time.

I guess my main point to make is that this is a Federal problem. It has been caused by the U.S. Government. The county of Becker has always said they are willing to negotiate, and they are willing to continue to negotiate and do what they can. However, they cannot solve the problem. It has to be solved here, and it has to be solved soon, before more farmers lose their farms or have to go out of business, or resorters have to go out of business because of these bad titles. It is a very, very serious situation.

Mr. **Alexander**. Would you, just for the record, introduce the gentlemen that are with you from the Becker County government?

Mr. **Sinclair**. Yes, I did: Mr. Wattenhofer, who is the chairman of the board of county commissioners, and Mr. Boyer, who is also a county commissioner.

Senator **Boschwitz**. What do you think of the bill that we have introduced?

Mr. **Sinclair**. I think from the standpoint of resolving the title problems it is an excellent bill. It would clear the title to these tracts once and for all, so that the owners are not going to have to be faced with this situation for years to come. There may be some technical corrections that could be made to it to make it better but I think it would resolve those problems.

As far as the compensation, I have not really studied that part of it. It seems to be a fair way of doing it, except for the possible cost involved.

Senator **Boschwitz**. Thank you, gentlemen. Your testimony has been very helpful.

[The prepared statements follow. Testimony resumes on p. 122.]

PREPARED STATEMENT OF JAMES D. SINCLAIR, ASSISTANT BECKER COUNTY ATTORNEY, DETROIT LAKES, MINNESOTA

INTRODUCTION

I am an Assistant County Attorney for Becker County, Minnesota and I am appearing on behalf of the County Board of Becker County. In addition to my employment as an assistant county attorney, I have been engaged in the private practice of law in Detroit Lakes, Minnesota since 1967. My practice is primarily in the real estate area and I am a member of the Council of the Real Property Section of the Minnesota State Bar Association. Appearing with me today are two members of the Becker County Board of Commissioners, Mr. Ray Wattenhofer, Chairman and Mr. C.A. Boyer.

Prior to appearing here I reviewed every title opinion issued by our office on land located in the White Earth Reservation since 1978. These opinions were only on privately owned land most of which is located in Becker and southern Mahnomen Counties.[1] Of the 470 tracts covered by this review, 117 tracts did not have marketable title because of title defects related to the transfer of allotted lands. The following table shows the number and percentages of the different classifications of title defects causing the title to be unmarketable. The miscellaneous group involves title defects that would have caused title to be unmarketable prior to the Zay Zah case. The other three classifications are discussed below.

	Number	Per Cent
Tax Forfeitures	4	3%
Probates by State Courts	74	64%
Conveyances by Female Allottees (18-21 years old)	26	22%
Miscellaneous	13	11%
TOTAL TRACTS	117	100%

If these percentages were to hold true for the entire reservation, then over one-fourth of the privately owned land or over 100,000 acres are subject to title defects of one sort or another. Most of these defects are apparent defects only, and they could probably be cleared by litigation. The following statement consists of a short history of the White Earth Reservation title situation, a discussion of the three major classifications of title problems and a few examples of the hardships that have been felt by land owners on the reservation.

HISTORY OF TITLE SITUATION

WHITE EARTH RESERVATION

The White Earth Indian Reservation was established by the Treaty of March 19, 1867, with the Chippewa Indian Tribe. It consists of 36 townships, 1,296 square miles and over 800,000 acres in North Central Minnesota. The land ranges from rich rolling farmland on the west to timbered lake country on the east.

Tracts within the reservation were allotted to individual Indians pursuant to the General Allotment Act of 1887, the Nelson

Act of 1889 and the Steenerson Act of 1904.[2] A "Trust Patent" was issued for each allotment retaining the fee title to this tract in the United States in trust for a period of twenty-five years. The trust period has since been extended indefinitely for the vast majority of allotments. During the trust period the allotment was free from state taxes and title could not be transferred by the allottee. After the Act of June 25, 1910, the Secretary of Interior had the sole jurisdiction to determine legal heirs of an allottee.

THE CLAPP AMENDMENT

The land title problems which the present bill proposes to relieve were all a result of the passage in 1906 of a rider to the Indian Appropriation Act of that year.[3] Proposed by Senator Moses Clapp of Minnesota, the act is commonly referred to as the Clapp Amendment or the Clapp Act. It purported to remove all restrictions from any allotment held by an "adult mixed blood Indian." The term "adult" is not defined in the act. The act reads as follows:

> That all restrictions as to the sale, incumbrance, or taxation for allotments within the White Earth Reservation in the State of Minnesota, heretofore or hereafter held by an adult mixed blood Indian, are hereby removed, and the trust deeds heretofore or hereafter executed by the Department for such allotments are hereby declared to pass the title in fee simple, or such mixed bloods upon application shall be entitled to receive a patent in fee simple for such allotments; and as to the full bloods, said restrictions shall be removed when the Secretary of

> the Interior is satisfied that said adult full blood Indians are competent to handle their own affairs, and in such case the Secretary of the Interior shall issue to such Indian allottee a patent in fee simple upon application.

The result of the passage of the Clapp Amendment was to open the White Earth reservation to land speculation and the conveyance of most allotments by the allottees or their heirs.

THE ZAY ZAH CASE

On October 21, 1977, the Minnesota Supreme Court handed down their decision in State of Minnesota v. Zay Zah.[4] This decision threw land titles on the White Earth Reservation into a turmoil which has not yet subsided. Zay Zah, also known as Charles Aubid, received a trust patent to forty acres in Chippewa County in 1927. He never transferred the land and he never applied for a fee patent. In 1961 the Auditor for Clearwater County executed a tax certificate of forfeiture vesting the property in the State of Minnesota for unpaid taxes. In 1974 a purchaser brought an action to quiet title which action eventually reached the Supreme Court.

The Court held that title to the land remained in the heirs of the allottee because the land was not subject to the state taxing power. The Court reasoned that the trust patent was a binding agreement between the United States and the allottee and could not be abrogated by the sole act of Congress. The Clapp Amendment then did not automatically terminate the trust unless the allottee consented to the termination by acts such as alienating the land or applying for a fee patent. Since Zay Zah had done nothing that could be interpreted as consent to the termination of the trust, the trust relationship remained in effect and the state could not impose taxes against the property.

The immediate reaction to the Zay Zah decision was a reluctance to accept the validity of any title on the reservation. Mortgage money dried up, title insurance companies refused to insure titles and few cautious buyers would purchase any land within the reservation. The title problems became more severe when Bureau of Indian Affairs personnel began combing all title records relating to the reservation and rumors of legal action were rampant. In 1980 letters were sent by the Bureau to land owners whose titles were suspect.

CLASSIFICATION OF TITLE PROBLEMS

It soon became apparent to me, as a title attorney, that there were three general classifications of title problems arising out of the Zay Zah case. These are tax forfeitures, probates by State Courts and meaning of "adult" in Clapp Act.

TAX FORFEITURES

The first of these involved the classic Zay Zah situation where property was forfeited for unpaid taxes while owned by an original allottee or the heirs of an original allottee where there has been no consent by the allottee or heirs. These title problems amount to less than five per cent of the total problems and affect less than one per cent of the privately owned land on the reservation.

PROBATE PROBLEMS

The most tragic part of this entire situation has been the vacillation of the Federal Government on the question of jurisdiction to determine heirs of allottees. Nearly two thirds (2/3) of the title defects which would be cured by this legislation fall into this classification.

After passage of the Act of June 25, 1910,[5] it was clear that jurisdiction to determine heirs of a deceased allottee was in the Department of Interior unless the act was modified for White Earth by the Clapp Act. In 1915 the Solicitor for the Department of the Interior held that the Secretary of Interior no longer had probate jurisdiction over adult mixed blood allottees on the grounds that the Clapp Amendment terminated the trust relationship with the allottee.[6] This was followed by an opinion of the Attorney General to the effect that "Where the title has passed to an adult mixed-blood Indian, now dead, or to the heirs of a deceased adult mixed-blood, all questions of the title by inheritance are vested in the proper state courts having jurisdiction of the subject matter and the parties under state laws."[7] For the next sixty-four years, the Department of Interior steadfastly refused to accept probates of any deceased mixed blood Indians. The State Courts, by default, began assuming jurisdiction. In 1920 the Minnesota Supreme Court, on the basis of a similar interpretation of the Clapp Amendment and on the basis of the department's repudiation of jurisdiction, held that State Courts had jurisdiction to determine heirs.[8] For the next sixty years, hundreds, perhaps thousands, of probates of mixed blood Indians were processed by State Probate Courts without objection. Countless innocent purchasers bought farms, resorts, summer cabins, homes and other properties on the assumption that the Department of Interior, the United States Attorney General, and Minnesota Supreme Court knew what they were doing and that their pronouncements could be relied upon. They were sadly mistaken.

In the Zay Zah decision the Minnesota Supreme Court specifically overruled the Baker decision thus setting the stage for the present situation. Two years later the solicitor for the department issued a new opinion overruling the earlier opinion of August 2, 1916, and declared that the United States Government was again taking over jurisdiction and directing "the appropriate Bureau of Indian Affairs employees to prepare for submission to the Office of Hearing and Appeals the necessary materials for the probate of these estates."[9] The Department is now attempting to determine the heirs of hundreds, perhaps thousands, of persons most of whom died over 50 years ago. That this is a monumental task which will cost millions of dollars is obvious, but becomes ludicrous when you realize that the entire procedure has already been done by the state courts at or near the time of death when it was possible to gather information from the heirs themselves or from people who personally knew the deceased and the heirs. In the meantime, innocent land owners must wait--without being able to sell or mortgage their farms, their homes, their resorts, their cabins--to find out if the federal government makes the same determination as the state courts did many years ago. If so, their title, if they have not lost the land in the meantime, is good.

But after more than 50 years it is likely that the Department of Interior will reach different conclusions than the state courts did in many cases and then the land owner will either have to challenge the determination in court, buy off the happily surprised heirs or lose his property. This legislation will eliminate this ridiculous situation, yet will provide compensation for any heirs who were actually disinherited in state courts. It is both an economical and a sensible solution to this complex problem.

FEMALE ALLOTTEES BETWEEN THE AGES OF 18 AND 21

The Clapp Amendment applies to adult mixed-blood allottees but does not define the term adult. For the past eighty years this has not been a problem since everyone apparently assumed that Minnesota law would determine the age of majority. During the years that most conveyances were made, the age of majority under Minnesota law was 21 for males and 18 for females. To my knowledge no conveyance by a female allottee over 18 was ever challenged until 1980. In that year some of the first letters from the Bureau of Indian Affairs were delivered to landowners informing them that their titles were being challenged. A client brought one of the letters into my office one day and asked why he had received it since I had recently assured him that his title was clear. I reviewed his abstract again and told him that the Bureau was mistaken. I wrote the Bureau to inform them of their mistake and received the reply that they had concluded that Congress had intended adult to mean 21 years of age. Litigation was recommended to the Justice Department on all tracts of land conveyed by any female allottee under 21.

Even if this construction of the meaning of the term "adult" were accepted by the courts, I doubt if the courts would divest an owner of his land or grant trespass damages 50-75 years after the event. However, the threat of litigation in federal courts, financed from the apparently bottomless coffers of the Federal Government, will persuade even the most willing buyer or lender to look elsewhere. Again this legislation provides a simple and economic solution to another problem that would not exist had the federal government played their proper role over the years.

SOME SPECIFIC SITUATIONS

A client of mine owns a home in the woods on the south end of the reservation. He is a skilled craftsman and operates out of his home. He sells his products at art fairs, craft fairs, the Renaissance Festival and other events throughout the Midwest. A few years ago he realized that it would be more efficient for him to live closer to his major market in Minneapolis and St. Paul. He listed his home for sale and moved to a community less than an hour's drive from the Twin Cities. He is now back living on the reservation because his property is encumbered by one of these defects. He and his family are effectively prisoners there until these problems are resolved.

Another couple had farmed on the reservation for most of their lives. They are retired now and want to sell their land and move to another city to spend their last years near their children. A young neighbor just starting out in farming wants to buy their farm but cannot get financing because several parcels of the land are encumbered by one of these title defects.

Several years before the Zay Zah decision, a developer developed several hundred feet of lake shore on a popular reservation lake and sold the lots to buyers who constructed summer homes on the lots. The title to the lots is good but the only access from the county road is across property subject to a title defect. No buyer will buy a lot if the federal government is threatening to shut off all access.

A local farmer decided he was unable to continue farming any longer and sold out in 1981. While the buyer of his land was arranging financing, he held an auction sale and sold his equipment and livestock. The buyer's attorney discovered that the allottee's heirs had been determined in state court and demanded a federal determination. The federal determination was completed about a year later. In the meantime his buyer withdrew his offer on the land and the land was placed for sale again. A second sale was delayed and almost fell through when the buyer who had to use his existing farm for collateral discovered a title defect on his land. The farm economy that year declined and a sale was finally completed this spring for $50,000 less than the original sale. The delay had cost him nearly all his equity in the property.

A low income wage-earner had been able to buy a rural home when he was married a few years ago. He now wants to buy a larger home to accommodate his growing family. He has a buyer willing to buy his present home but he cannot get financing because of title problems. The seller can't sell on a contract for deed because he needs the sale proceeds to make the down payment on his new home.

These are just a few of the human problems that the White Earth Title dispute has caused. Farmers are unable to raise the operating capital necessary to continue farming because of title defects but they can't quit farming because no one will buy their land. If they don't get relief soon they will lose their farms to the mortgage holders who also will be unable to sell them. In today's economy small resorts cannot operate as successfully as they have in the past. Resort owners must expand these resorts or subdivide the property for sale. They cannot expand because mortgage money is not available and they can't sell because their title is defective. Again, without help, they will lose what they have worked for years to build.

The Becker County Board of Commissioners has passed a resolution urging this committee to hold hearings near the White Earth Reservation so these people, who cannot afford to come to Washington to testify, can tell you their own stories.

CONCLUSION

Approximately one-fourth (1/4) of the privately owned land on the White Earth Reservation, over 100,000 acres, does not have marketable title as a result of the threatened lawsuits by the United States Government. In the vast majority of cases the individual landowners had no way to protect themselves. An examination of court cases, opinions of the United States Attorney General and the practices of the government over the past 65 years would have led them to the conclusion that their purchase was safe. The position of the Department of Interior that it has to probate estates of all mixed-blood Indians who died since 1915 despite the fact that most of these estates have already been probated in state courts will result in vast expenditures of time and effort which will accomplish nothing except to delay clearance of titles until many of the land owners will have lost their lands. The question of when an allottee has become an adult was decided decades ago by common acceptance. The threat of the federal government to bring lawsuits on this issue is an abuse of process which Congress should not allow.

This is not a white man vs. Indian dispute. Many of the landowners are Indians and are facing the same problems as other landowners. This should not be a landowner vs. Tribal Government dispute. Neither the Indian nor the landowner is to blame for the White Earth mess. The sole responsibility lies with the United States Government and it is the duty of Congress to resolve it.

I realize that this problem seems minor to you compared to the issues you face on a day-to-day basis on Capital Hill, but to many of the people living on the reservation it means economic life or death. I urge you to come to Minnesota and hold hearings that can be attended by the people who are most directly affected. I urge you to promptly pass legislation to resolve these difficulties before more people lose their farms, their resorts, their homes, their lake cabins.

FOOTNOTES

[1] For each opinion I counted the number of Government Lots or 40-acre tracts involved. I then counted the number of Government Lots or 40-acre tracts on which one of the four types of title defects occurred. Thus there were less than 470 title opinions but a total of 470 Government Lots or 40-acre tracts involved. The application of these figures to the entire reservation should be accurate, subject to the following sources of error: 1) the tracts involved were mostly located in the southern 12 townships located in Becker County and a very few, if any, involved in the northern townships; 2) the examination only covered privately owned lands; and, 3) only titles to property which was being sold or mortgaged would have been examined and therefore less valuable and less marketable property would not be included.

[2] General Allotment Act, ch. 119, 24 Stat. 388; Nelsen Act, ch. 24, 25 Stat. 642; Steenerson Act, ch. 1786, 33 Stat. 539.

[3] Act of June 21, 1906, ch. 3504, 34 Stat. 325, 353, Amended by Act of March 1, 1907, ch. 2285, 34 Stat. 1015, 1034.

[4] 259 NW 2d 580 (Minn. 1977), cert. denied 436 U.S. 917 (1978).

[5] Ch. 431, 36 Stat. 855. The Act provides as follows:

> That when any Indian to whom an allotment of land has been made, or may hereafter be made, dies before the expiration of the trust period and before the issuance of a fee simple patent, without having made a will disposing of said allotment as hereinafter provided, the Secretary of the Interior . . . shall ascertain the legal heirs of such decedent . . . . If the Secretary of the Interior decides the heir or heirs of such decedent competent to manage their own affairs, he shall issue to such heir or heirs a patent in fee for the allotment of such decedent; if he shall decide one or more of the heirs to be incompetent he may, in his discretion, cause such lands to be sold . . . .

[6] Solicitor's Opinion No. D-29636. Department of Interior, Offices of the Solicitor (August 2, 1915).

[7] Opinion F. J. Kearful, Assistant Attorney General to the Secretary of Interior, December 24, 1917. See Baker v. McCarthy, 145 Minn 167; 176 NW 643.

[8] Baker v. McCarthy, supra, note 7.

[9] Memorandum from Office of Solicitor, Department of Interior to Assistant Secretary, Indian Affairs. (May 9, 1979).

United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
MINNESOTA AGENCY
P. O. Box 97
CASS LAKE, MINNESOTA 56633

IN REPLY REFER TO:

December 13, 1979

Mr. Fred Rothschadl
Chairman
Mahnomen County Board
P.O. Box 379
Mahnomen, MN 56557

Dear Chairman Rothschadl:

By this notification we are informing you of the possible defect in title to certain lands within the county of Mahnomen in the State of Minnesota. The lands lie on the White Earth Indian Reservation, and under the provisions of the Nelson Act, Ch. 24, 25 Stat. 642 (1889), were allotted by the United States in trust to individual Indians. In response to the so-called Clapp Amendment, Ch. 3504, 34 Stat. 353 (1906), at one time or another each was placed on the Mahnomen County tax rolls and, when taxes were not paid, was purportedly forfeited to the State in trust for the county. However, under the holding of State of Minnesota v. Zay Zah, 259 N.W.2d 580 (1977), cert. denied, 436 U.S. 917, 98 S.Ct. 2263, 56 L.Ed. 2d 758 (1978), fee title to each actually was, and is, held by the United States in trust for the Indian beneficial owners.

As you know, the Zay Zah case held that the Clapp Amendment was ineffective to terminate the United States' trust relationship with White Earth mixed-blood Indians, unless the Indians took some action which clearly manifested their consent to the termination. In the cases listed below, and perhaps certain other cases which we are now investigating, the Indian never took any action which could be deemed to have operated as such a consent, therefore, the United States' ownership of their allotments continued, was extended by the Indian Reorganization Act, 25 U.S.C. §462 (1976). Consequently, no taxes could at any time validly be imposed on the lands, and the lands' purported forfeiture was void.

At my request the Office of the Field Solicitor, of the Department of the Interior, has reviewed the title to land situated in Mahnomen County within the State of Minnesota. Again, at my request, the Field Solicitor has submitted to the Associate Solicitor, Division of Indian Affairs, Department of the Interior, their findings along with a recommendation to refer individual cases to the Department of Justice for litigation.

This notice is to inform you of these actions and that the Bureau of Indian Affairs will make every attempt to clear the United States' title to these lands.

The lands which are the subject of this notice are listed below. Any correspondence concerning them would be processed more effectively if you include the description, the allottee's name and our file number.

DESCRIPTION	ALLOTTEE'S NAME	OUR FILE NUMBER
SE¼NW¼NW¼ 27-144-40	Peter Smith	F-50-53-408-114

Any and all questions and correspondence may be directed to the Field Solicitor at Fort Snelling, Twin Cities, Minnesota.

Sincerely,

Acting Superintendent

This notice is to inform you of these actions and that the Bureau of Indian Affairs will make every attempt to clear the United States' title to these lands.

The lands which are the subject of this notice are listed below. Any correspondence concerning them would be processed more effectively if you include the description, the allottee's name, and our file number.

DESCRIPTION	ALLOTTEE'S NAME	OUR FILE NUMBER
S½NE¼ 21-143-39	James Carroll Webster	F-50-53-408-101
N½SE¼ 9-143-39	Omah Dway Aush Equay	F-50-53-408-099

Any and all questions and correspondence may be directed to the Field Solicitor at Fort Snelling, Twin Cities, Minnesota.

Sincerely,

Acting Superintendent

This notice is to inform you of these actions and that the Bureau of Indian Affairs will make every attempt to clear the United States' title to these lands.

The lands which are the subject of this notice are listed below. Any correspondence concerning them would be processed more effectively if you include the description, the allottee's name, and our file number.

DESCRIPTION	ALLOTTEE'S NAME	OUR FILE NUMBER
Lots 6 & 7 7-144-40	May Mis Quon O Way	F-50-53-408-126
S½NW¼NW¼ 25-145-42	May Mis Quon O Way	F-50-53-408-126

Any and all questions and correspondence may be directed to the Field Solicitor at Fort Snelling, Twin Cities, Minnesota.

Sincerely,

Superintendent

This notice is to inform you of these actions and that the Bureau of Indian Affairs will make every attempt to clear the United States' title to these lands.

The lands which are the subject of this notice are listed below. Any correspondence concerning them would be processed more effectively if you include the description, the allottee's name and our file number.

DESCRIPTION	ALLOTTEE'S NAME	OUR FILE NUMBER
SE¼SE¼ & SW¼SW¼ 13-143-39	Susan McDougall	F-50-53-408-038

Any and all questions and correspondence may be directed to the Field Solicitor at Fort Snelling, Twin Cities, Minnesota.

Sincerely,

RW Mayotte

Superintendent

This notice is to inform you of these actions and that the Bureau of Indian Affairs will make every attempt to clear the United States' title to these lands.

The lands which are the subject of this notice are listed below. Any correspondence concerning them would be processed more effectively if you include the description, the allottee's name and our file number.

DESCRIPTION	ALLOTTEE'S NAME	OUR FILE NUMBER
N½NW¼ 12-143-39	Pe Nay	F-50-53-408-018

Any and all questions and correspondence may be directed to the Field Solicitor at Fort Snelling, Twin Cities, Minnesota.

Sincerely,

RW Mayotte

Superintendent

RESOLUTION BY THE MAHNOMEN COUNTY BOARD OF COMMISSIONERS OF THE STATE OF MINNESOTA

Commissioner Fred Rothschadl offered the following and moved for its' adoption:

WHEREAS, Mahnomen County of the State of Minnesota is well aware that certain land claim issues have been raised on the White Earth Indian Reservation of the State of Minnesota and that said land claim issues are currently causing title problems in the County of Mahnomen, and;

WHEREAS, that said land claims problems are causing financial difficulty on residents of the County of Mahnomen to the extent that lending institutions, both private and governmental, are in certain cases, refusing to borrow money on said real estate to either prospective buyers or to current owners who wish to expand their operations, and;

WHEREAS, said amount of land in Mahnomen County is at least in excess of 45,000 acres, and;

WHEREAS, the County Board of the County of Mahnomen has had an opportunity to review and study S885, the same being a bill introduced by Senator Dave Durenberger to address and resolve the land claims issue in the White Earth Indian Reservation, and;

WHEREAS, the County of Mahnomen has attempted to meet with interested parties of the Minnesota Chippewa Tribe, White Earth Reservation Business Committee, in an effort to determine whether or not any viable alternatives exist to Senator Dave Durenberger's proposed legislation, and;

WHEREAS, the County failed to receive any written alternatives from the representatives of the White Earth Indian Reservation Business Committee and thus is frustrated in its' efforts to attempt to locally produce mutually agreeable solutions to the problem,

NOW THEREFORE, BE IT RESOLVED, that the Mahnomen County Board of Commissioners of the State of Minnesota, hereby support the content and concept of Senator

Dave Durenberger's bill, the same being S885, and feel that it would be an equitable and just solution to an extremely complex and emotional issue and that the Mahnomen County Board of Commissioners would request further that the committee give due regard and weight to the comments of the Mahnomen County Board of Commissioners in this matter.

Commissioner Lester Norby seconded the above and upon roll call vote, the resolution was unanimously adopted.

I, Joanne Terway, Auditor in and for the County of Mahnomen, State of Minnesota, do hereby certify that the above resolution was duly adopted by the Mahnomen County Board of Commissioners at a regular meeting held on November 8th, 1983.

Joanne Terway

Joanne Terway, County Auditor
Mahnomen County, Minnesota
Mahnomen County Courthouse
Mahnomen, MN 56557

PREPARED STATEMENT OF RAYMOND WATTENHOFER, Sr., CHAIRMAN, BECKER COUNTY BOARD OF COMMISSIONERS, DETROIT LAKES, MINN.

Mr. Chairman, Members of the Committee,

My name is Raymond Wattenhofer and I serve as Chairman of the Becker County Board of Commissioners, Detroit Lakes, Minnesota. On behalf of the Becker County Board, I wish to express our sincere appreciation to this Committee that hearings on the legislation in question are being held in both bodies of the U. S. Congress. This is a sign to us that hope exists to bring solution to this damaging and complex issue.

The land claim issue has gone without solution in excess of 6 years. We can wait no longer. The issue itself is potentially devisive to an otherwise harmoneous community. The economic effect is developing into an issue of major concern in our County. Because of the fact that the land claim issue has remained unsolved actual deflation in land sale value has occurred. Some lending institutions have shown a reluctance to finance land sales in areas concerned. To be more direct, if a farmer has even a small portion of his land in conflict, he is unable to borrow against the land to perform normal agricultural practice, and he is unable to sell the farm because of this cloud on his title. Needless to say, the more the solution is delayed, the more damage results to all parties concerned. This issue has to be settled, and settled very soon. The solution to this issue is clearly a matter that is the responsibility of Congress. It will take Legislative action which is fair and reasonable to all parties concerned. to allow land values to return to land values typical of the area and to re-establish the faith of normal lending institutions.

No doubt the specific legislation now under consideration will have to be subject to review by all parties affected. Major changes will most likely be needed. What is of primary importance is that you design a reasonable solution and that solution must have the effect of curtailing any chance of future land claims.

We strongly request that you bring resolution to this matter with the greatest possible speed. The means of resolution must be fair. Failure to bring resolution would be grossly unfair. The land owners, the Tribal Community, and our entire Communtiy at large await your action

SINCERELY YOURS,

Ray Stattenhofer

CHAIRMAN
BECKER COUNTY BOARD OF COMMISSIONERS

Senator **Boschwitz.** Mr. Kraker, do we have a prepared statement from you?

STATEMENT OF MICHAEL KRAKER, COUNTY ATTORNEY, MAHNOMEN COUNTY, MN, ACCOMPANIED BY EMMETT KAHLBAUGH, CHAIRMAN, BOARD OF COMMISSIONERS; AND RICHARD LARSON, COUNTY COMMISSIONER

Mr. **Kraker.** Senator Boschwitz, thank you. We have a copy of the resolution the County Board of Mahnomen passed, which I have given the committee, which we would like introduced in the record. In essence it is just a brief statement indicating the county's support of the bill in its current form.

I do have some other comments, and would like the record to reflect that also here with me to my immediate left is the chairman of the Mahnomen County Board, Emmett Kahlbaugh, and he has a couple of brief comments after I am done. To his left is another County Commissioner, Richard Larson, from Mahnomen County.

I guess what I would like to do, Senator, is perhaps respond to some of the questions that Chairman Mark Andrews had and some that you had regarding what has occurred on the local level as far as negotiations and what efforts the counties have taken to further and hasten this process.

As you are aware, Mahnomen County is entirely encompassed in the original confines of the White Earth Indian Reservation. A substantial portion of the affected land, therefore, is in Mahnomen County. I believe that of the alleged 100,000 acres that are under question by the Department of Interior, over 46,000 are in Mahnomen County. Therefore, the county has a substantial interest in hastening the process to solve these problems. To that end, they have made appeals to State officials and to our Federal officials to assist us.

In that process, we have met with tribal officials. We have met with State officials. There has been some prior testimony about those talks breaking down. One of the reasons that Mahnomen County and Clearwater and Becker County sent representatives to Washington in July was to express our frustration that nothing apparent was happening.

We knew of the bills that were introduced in the Senate and House. We were in fair concurrence that those bills adequately and equitably handled the land claims problem. We felt that was the first chip on the table, so to speak. I guess the first concession the county saw in those bills is that those bills agreed that every claim, whether there may be a legal justification for it or whether it would succeed in litigation, was going to be treated as if it would. Therefore, the first concession was that all claims were going to be treated as valid. We felt that was a major concession.

We then were looking for some sort of alternative proposals from either the Tribe or the Department of Interior. During those meetings the only proposals that were given as a counter proposal came at a meeting in Detroit Lakes in which an oral counter proposal or oral philosophy was put forth by the Tribe, and they were requesting—as, again, they did here—they did not quite want to treat the land claims problem as a separate issue, but wanted any legislation to right injustices that they felt had been done to their race over a substantial period of time. They wanted a total economic and social package to address the problem, rather than just a land claims bill.

That, in substantial reason, was the reason for the breakdown in the talks. Some of the elements of compensation that they set forward at that meeting which were not brought today are, they wanted the White Earth Band treated as a separate tribe. They wanted a separate BIA agency at White Earth. They wanted return of the four townships in Clearwater County; the exclusive right to control their hunting and fishing and natural resources; and a land acquisition program or money to acquire land.

The counties, I believe, at least on their part—I do not know and I cannot speak for the State—felt that the type of compensation that the Tribe was requesting went outside the scope of the land claims issue, and that is the reason it broke down. Additionally, the Department of Interior did not put forth any concrete alternatives to legislation. It has been the counties' perceived impression, I guess, that in the last 6 years the Department of Interior and BIA have more or less spent their resources in, No. 1—which is probably correct—identifying the scope and extent of the problem but, No. 2, looking at litigation more seriously than they did at legislation.

Illustrative of that point are letters that the Department of Interior, Bureau of Indian Affairs sent out to member on the reservation, and I have some here. I would like these also to be introduced into the record.[1] I do not have copies in the quantity that was requested, but in essence it is a letter to an individual landowner stating that his land is in question and it may be subject to a future lawsuit. This brought emotions to a high pitch on the reservation, and the media of course picks up on such issues. The people are well aware that litigation is a substantial possibility. They are not, perhaps, quite so aware that legislation is a substantial possibility.

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[1] Retained in committee files.

I am encouraged to hear now that the Indian leadership, at least in their testimony today, felt that a legislative solution would be more beneficial to the tribe as a political entity and also more beneficial to their individual constituents. I would hope that the Department of Interior would take note of that and would, therefore, address their resources and time and expertise to looking at legislative solutions rather than pursuing litigation, as they indicated they were considering and did recommend litigation against the counties and State. What they failed to note was that if they did initiate litigation against the counties and State, they would also force the private landowners who are in the same status to enter those lawsuits and incur substantial individual cost.

In sum, I would view that there has been a lack of motivation, perhaps, on the Department of Interior or the tribal officials to pursue a legislative solution. I would hope that this committee and these committee hearings could provide that motivation. That is the extent of my comments.

[The resolution follows:]

RESOLUTION BY THE MAHNOMEN COUNTY BOARD OF COMMISSIONERS OF THE STATE OF MINNESOTA

Commissioner Fred Rothschadl offered the following and moved for its' adoption:

Whereas, Mahnomen County of the State of Minnesota is well aware that certain land claim issues have been raised on the White Earth Indian Reservation of the State of Minnesota and that said land claim issues are currently causing title problems in the county of Mahnomen, and

Whereas, that said land claims problems are causing financial difficulty on residents of the County of Mahnomen to the extent that lending institutions, both private and governmental, are in certain cases, refusing to borrow money on said real estate to either prospective buyers or to current owners who wish to expand their operations, and;

Whereas, said amount of land in Mahnomen County is at least in excess of 45,000 acres, and;

Whereas, the County Board of the County of Mahnomen has had an opportunity to review and study S885, the same being a bill introduced by Senator Dave Durenberger to address and resolve the land claims issue in the White Earth Indian Reservation, and;

Whereas, the County of Mahnomen has attempted to meet with interested parties of the Minnesota Chippewa Tribe, White Earth Reservation Business Committee, in an effort to determine whether or not any viable alternatives exist to Senator Dave Durenberger's proposed legislation, and;

Whereas, the County failed to receive any written alternatives from the representatives of the White Earth Indian Reservation Business Committee and thus is frustrated in its' efforts to attempt to locally produce mutually agreeable solutions to the problems,

Now therefore, be it resolved, that the Mahnomen County Board of Commissioners of the State of Minnesota, hereby suport the content and concept of Senator Dave Durenberger's bill, the same bein S885, and feel that it would be an equitable and just solution to an extremely complex and emotional issue and that the Mahnomen County Board of Commissioners would request further that the committee give due regard and weight to the comments of the Mahnomen County Board of Commissioners in this matter.

Commissioner Lester Norby seconded the above and upon roll call vote, the resolution was unanimously adopted.

I, Joanne Terway, Auditor in and for the County of Mahnomen, State of Minnesota, do hereby certify that the above resolution was duly adopted by the Mahnomen County Board of Commissioners at a regular meeting held on November 8th, 1983.

Senator **Boschwitz**. Paul, do you have any questions?

Mr. **Alexander**. Yes; thank you, sir.

Senator **Boschwitz**. All those buzzers just tell us what is going on on the floor of the Senate. The two buzzers mean nothing is going on on the floor of the Senate.

Mr. **Alexander**. You mentioned the July meetings this year, at which time you raised your concerns that items that were in your view separate to the specific land claims, were being included by the tribe on their side as potential items for negotiation. Is it still your position that those items should be excluded from any negotiated solution, both you gentlemen?

Mr. **Kraker**. Mr. Sinclair was present at the July hearings. He was not, I believe, at the meetings in Detroit Lakes when these items were first brought up.

I think the counties' positions are, we perhaps do not have any substantial objection to agreeing and consenting to treating White Earth as a separate tribal entity, but whether or not our agreeing to it would mean the Federal Government would in fact treat them as that is something out of our control. Therefore, some of those items we perhaps could agree to and it would have no force or effect.

I think some of the items, such as return of the four townships and a right to exclusive control of the natural resources, the counties would feel are outside the scope of this legislation and perhaps not a proper part of it, and therefore we would not feel that that is——

Mr. **Alexander**. Well, what I would like to distinguish between is those items on which you oppose the tribal position and those items you will not discuss with them because you believe they are outside the scope of any legitimate discussion. Could you go down your list with that distinction in mind?

Mr. **Kraker**. OK. Perhaps the commissioners can jump in and help me, but I guess the two that I see that are really, perhaps, outside the scope would be returning of the four townships and the exclusivity of control of natural resources. I think that, at least with regard to the latter, there are some separate negotiations going on between the tribe and the State at the current time that could address those problems, but I think those two items are totally outside the scope of the land claims bill. The rest, perhaps, are proper.

Mr. **Alexander**. Would you care to comment on those two questions?

Mr. **Sinclair**. I have not personally been involved in any of the meetings on this, but my understanding is that I would agree with Mr. Kraker on those. Most of the issues that were raised at those meetings were ones that we had nothing to say about. It was either the State or the Federal Government that had to make the decision. The two items that Mr. Kraker mentioned I am sure would be opposed by Becker County as well.

Mr. **Alexander**. Earlier in the day there was testimony that at one point a number of the counties in the area opposed any sort of compensation of their allottees or their heirs. Am I correct that that is not the position of either of these counties at this time?

Mr. **Sinclair**. It is not now and never has been the position of Becker County.

Mr. **Kraker**. I think with regard to Mahnomen County, it certainly is not the position now to oppose a negotiated settlement. I think that comments before perhaps went to other related issues that the county was not in favor of negotiating, to wit, hunting and fishing.

Mr. **Alexander**. Could you each tell me how much land each of your counties has that is subject to the claims, and how that land is currently being used? I do not mean the land that is owned by innocent third-party citizens. I mean owned by the county government.

Mr. **Kraker**. I do not have a breakdown of the acreage. I can provide that to the committee within the 2-week timeframe they set forth. I would state that generally speaking, all of the land the county has, either held by the State in trust for us or that we own in fee, with perhaps the exception of a couple of 40-acre tracts that might be gravel pits, is either used for recreational purposes or is just lying dormant now, with maybe a little bit of forest sales going on.

Mr. **Alexander**.When you submit that for the record could you provide to us, also, any income that has been derived from that property currently or over the years?

Mr. **Kraker**. Yes; we can.

Mr. **Alexander**. Mr. Sinclair, could you address that question also?

Mr. **Sinclair**. I will. Could you state what it is that you——

Mr. **Alexander**. I would like to know the lands held by the county, either as a beneficiary or in fee ownership, that are subject to the claims; how much, how it is being used, and what income that property provides the county, if any.

Mr. **Sinclair**. I will do that.

Mr. **Alexander**. Thank you.

[Subsequent to the hearing the following information was received for the record:]

MICHAEL J. KRAKER
MAHNOMEN COUNTY ATTORNEY
P.O. BOX 439
MAHNOMEN, MINNESOTA 56557
TELEPHONE 218-935-2378

RECEIVED [illegible] 1983

November 28, 1983

Senator Mark Andrews
Chairman
Select Committee on Indian Affairs
Washington, D.C. 20510

RE: S. 885/ Land Claims White Earth Reservation

Dear Senator Andrews:

Pursuant to the request of your Staff director, Paul Alexander, enclosed please find supplemental testimony/factual data to be offered by Mahnomen County relative to the hearing held on November 17, 1983 on S. 885.. As I understand the proceedings this document will now be made part of the offical record of that hearing.

Thank you for your time and effort in this matter.

Very Truly Yours,

Michael J. Kraker
Mahnomen County Attorney.

cc/ Paul Alexander

"EQUAL OPPORTUNITY EMPLOYER"

SUPPLEMENTAL TESTIMONY OFFERED
BY MAHNOMEN COUNTY

As directed and requested by the Senate Committee on Indian Affairs on November 17, 1983, Mahnomen County of the State of Minnesota has compiled certain factual data relative to the number of acres currently held and administered by the County of Mahnomen, the uses to which said property is put or its nature and character, and the income derived from such lands, if any. This factual information has been compiled from records in the possession of the Mahnomen County Auditor.

As of July of 1983, the County of Mahnomen was the administrator over 6,124 acres of tax forfeited land. This 6,124 acres is held in trust for the County of Mahnomen by the State of Minnesota but the acreage is administered by the County. Of the 6,124 acres the County has been put on notice by the Department of Interior that approximately 660.83 acres have a "claim" against them based upon the theory that the claim is for recovery of lands tax forfeited while in trust or restricted status. There are undoubtedly other "claims" against this land upon other theories as put forth by the Department of the Interior but, to date, the County has not been formally so advised. This acreage is almost exclusively forested property with some minor portion of it being marginal agricultural land. Attached as Appendix A is a list of the legal descriptions of such tax forfeited lands. Pursuant to Minnesota Statutes 477A.11 through 477A.14 the County of Mahnomen receives a payment "in lieu of tax" on this acreage at the rate of $0.75 per acre or a total of $4,593.00 for the year 1982.

The County of Mahnomen also owns land in fee simple (total ownership-both equitable and legal). This land comprises less than 40 acres total and consists of small scattered lots within the City of Mahnomen and in various townships.

The nature of the property would consist of the land the County Courthouse, County fair buildings, County Engineer Shop/yard and County Sanitary Landfill occupy. The County receives no income from these lands.

Additionally there are two caterogies of land administered by the State of Minnesota from which the County of Mahnomen derives an income. There exist 4,939 acres of land administered by the State of Minnesota for Natural Resources purposes within Mahnomen County and for which the County receives a payment in lieu of tax at the rate of $3.00 per acre or $14,817.00 for the year 1982. There also exists another 28,098 acres of land administered by the State for Natural Resources purposes and for which the County receives a payment in lieu of tax at the rate of $0.375 per acre or $10,537.00 for the year 1982. Of this 33,037 acres the vast majority is forestry lands or wildlife management areas. None of the land, to the knowledge of the County, serves any commercial or industrial use.

Of the total gross payment of $29,947.00 that the County receives from the State as payment in lieu of tax on all of the land described above there are certain deductions that are mandated by law. Pursuant to Minnesota Statutes 84A.51 (Consolidated Conservation), MS 89.036 (State Forest) and MS 97.49 subd 3 (Public Hunting Grounds) a total of $7,893.22 was deducted from the gross payment, thus leaving the County with a net payment of $22,053.78.

Aside from the factual data presented above the County of Mahnomen would like to further make several comments relative to any proposed settlement that may involve land exchange. As the Committee is undoubtedly aware, the primary source of revenue for any small county such as Mahnomen is its taxing ability. Many factors interact to constitute a county's taxing power; factors such as acreage size of the tax base, non-taxable lands still in need of basic services, levy limitations, land valuations, etc. Any reduction of the County's tax base substantially hampers its efforts to provide services to all of the County's residents, tribal and non-tribal alike. Transfer of lands from either County administered status or State administered status to ownership by the Tribe on behalf of the heirs and alottees or the United States government on behalf of the Tribe or the heirs/alottees would only serve to weaken Mahnomen County's already limited tax base. Currently Mahnomen County is already adversely affected by the fact that substantial acres of land are now held by the United States, the White Earth Band and by the State of Minnesota. Although the State of Minnesota does pay a certain sum in lieu of taxes, that is not the case with the United States or the White Earth Band. Land valuations as determined by the County Assessor are in part based on actual sales. Because of the land claims and the general economy, sales do not reflect true values and thus valuations for tax purposes are unrealistically low. The County is not in a position to compensate for these factors by merely increasing the "mill rate". Minnesota law has a formula as set forth by State statute, commonly called levy limitations, which restricts a county from drastically increasing its tax levy. In any event, the County does not believe that the taxpayer can or should have to shoulder such a disproportionate burden. The tragic fact that is becoming apparent is that an increasingly small number of taxpayers are funding the basic services for all. The County is aware that the possibility exists that land exchange may be made a part of any compensation package in the proposed legislation. The County is of the opinion that substantial concessions have already been made in the current proposed legislation, specifically the Bill considers all land claim theories as being valid (while litigation might well prove otherwise). The County has in the past and continues now to provide substantial services to Tribal members, including police protection, road construction and maintenance, and social service programs such as Aid to Families with Dependent Children, Medical Aid, etc. The County believes it will still be required to provide those services to Tribal members no matter what compensation is given to the alottees/heirs or the Tribe as a political entity. Land Exchange would weaken the County's ability to provide those services, unless some sort of payment in lieu program on federal lands was considered to offset the lost revenue.

In addition to being an agricultural community, Mahnomen County also relies heavily on tourism. To that extent the large amounts of public lands available for hunting, camping and general recreational purposes are a substantial asset. Any change in the manner in which the land is currently held could adversely impact on the public's perception of Mahnomen County. Comments are often made and believed, whether true or not, that if the land is transfered to Tribal status that the general public will be excluded from using that land to the same extent it is currently being utilized. While there is no way to measure this type of loss, the County does believe it represents an economic loss should land transfers be made a part of a compensation package. For these reasons the County of Mahnomen does not favor land exchange as being part of the compensation package in any proposed land claims legislation.

A final comment regarding the land claims issue does not deal with the concept of land transfer but with the concept that the White Earth Band as a political entity would receive its "own" compensation even though the Band does not have standing as a claimant. In light of the tribe's own announced position that their members are economically distressed, the County feels that any compensation arrangement with the Tribe should not be in the form of a dollar amount into their general revenue fund to spend as they see fit. Rather the County is of the opinion that any compensation they receive should be specifically tied to such programs either already in place or to be developed that would generate substantial employment for their tribal members. The County is not opposed to compensation to the tribe if the purpose is to generate employment among tribal members or facilate some sort of self-supporting commercial or industrial enterprise.

MAHNOMEN COUNTY--Unorganized Township(Little Elbow) 143 North Range 39 West

Description	Claim Identified	Section	Acres
SE¼ NE¼	yes	1	40.00
SE¼ NE¼		2	40.00
LOT 8		2	.75
SE¼SW¼		4	40.00
SW¼NE¼		6	40.00
LOT 7		6	35.35
NE¼ NE¼	yes	9	40.00
LOT 2		11	1.00
SE¼ NW¼		15	40.00
NE¼ SW¼		15	40.00
LOT 7	yes	18	42.00
NE¼ NW¼		23	40.00

Twin Lakes Township 144North Range 39 West

Description	Claim Identified	Section	Acres
SW¼ NE¼ (part)		12	10.00
SW¼ NE¼		22	40.00
NW¼ SE¼		22	40.00
NW¼ NE¼		23	40.00
NW¼ NW¼	yes	25	40.00
E½ NE¼ SW¼		25	20.00
S½ NW¼		27	80.00
NE¼ NE¼		28	40.00
SW¼ SE¼ (part)		28	20.00
LOT 3		29	3.85
SE¼		33	160.00
NW¼ NE¼		35	40.00
SW¼ NE¼		35	40.00
NE¼ NE¼		36	40.00
S½ SE¼		36	80.00

Clover Township 145 North Range 39 West

Description	Claim Identified	Section	Acres
SE¼ NE¼		9	40.00
NW¼ NW¼		17	40.00
SW¼ NW¼		17	40.00

Island Lake Township 146 North Range 39 West

Description	Claim Identified	Section	Acres
E½ NW¼ SW¼		4	20.00
LOT 6		12	39.50
LOT 5		12	10.80
LOT 4		12	37.60
NE¼ SE¼		12	40.00
E½ NW¼ SE¼	yes	12	20.00
SW¼ SE¼		12	40.00
NE¼		13	160.00
LOT 1		13	20.00
LOT 4		13	19.25
LOT 3		13	39.40
LOT 2		13	26.25
NE¼ SW¼		13	40.00
SE¼ SW¼		13	40.00
NE¼ SE¼		13	40.00
NW¼ SE¼		13	40.00
SW¼ SE¼		13	40.00
SE¼ SE¼		13	40.00
SW¼		15	160.00
SE¼ SE¼		16	40.00
N½ NE¼		24	80.00
SE¼ NE¼		24	40.00
SE¼ NW¼		25	40.00
NE¼ SE¼		33	40.00
SE¼ SE¼		33	40.00

Oakland Township 143 North Range 40 West

Description	Claim Identified	Section	Acres
LOT 11		13	33.00
LOT 1(part)		14	3.10
LOT 2 (part)		14	11.25
LOT 5		14	29.75
LOT 4		14	33.50
LOT 7	yes	14	36.50
LOT 6		14	16.75
SW¼ SE¼		15	40.00
NE¼ NE¼	yes	23	40.00
NW¼ NE¼		23	26.67
SE¼ NE¼	yes	23	40.00
SW¼ NW¼		23	40.00
NW¼ SW¼		23	40.00
NE¼ SE¼		23	40.00
SW¼ NW¼		25	40.00
NE¼ SE¼		25	36.00
LOT 8		26	11.25
SW¼ NW¼		27	40.00
NW¼ SW¼		27	40.00
E½ SW¼		28	80.00

Oakland Con't

Description	Claim Identified	Section	Acres
SW¼ SW¼	yes	32	40.00
NE¼		34	160.00
NW¼		34	160.00
SE¼		34	160.00
SW¼		34	160.00
NW¼ NE¼ (part)		35	10.00
NW¼ SE¼		35	40.00
SW¼ SE¼		35	40.00

LaGarde Township 144 North Range 40 West

Description	Claim Identified	Section	Acres
S½NW¼		11	80.00
NE¼ NE¼		13	40.00
S½ NE¼		13	80.00
LOT 2		24	29.30
LOT 1		24	25.39
LOT 4		25	48.65
SE¼ SW¼		25	40.00
S½ NE¼		36	80.00
SE¼		36	160.00

Beaulieu Township 145 North Range 40 West

Description	Claim Identified	Section	Acres
LOT 1		1	40.12
SE¼ NE¼		1	40.00
N½ SE¼		1	80.00
S½ SE¼		3	80.00
N½ NE¼		10	80.00
LOT 1		14	12.20
E½ SE¼		19	80.00
LOT 3		23	1.25
NW¼ NE¼		25	40.00
S½ NE¼		25	80.00
NW¼		25	160.00
SE¼		25	160.00

Heir Township 146 North Range 40 West

Description	Claim Identified	Section	Acres
LOT 5		1	30.83
LOT 6		1	7.35
LOT 7	yes	1	7.63
LOT 8	yes	1	15.49
LOT 2	yes	1	59.81
LOT 3		1	58.47
SE¼ SW¼	yes	12	40.00
SW¼ SE¼		12	40.00
LOT 2		12	35.00
NE¼ NE¼		13	40.00
SE¼ NE¼		13	40.00
NW¼ NW¼	yes	13	40.00
SW¼ NW¼	yes	13	40.00
LOT 3	yes	22	39.40
SE¼ NW¼ (part)		33	10.00
NE¼ SE¼	yes	35	40.00
NW¼ SE¼	yes	35	40.00
SW¼		36	160.00

Gregory Township 146 North Range 41 West

Description	Claim Identified	Section	Acres
Lot 4		5	36.11

Pembina Township 144 North Range 42 West

Description	Claim Identified	Section	Acres
SE¼ NW¼ (part)		11	13.00

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Telephone 218-847-6590
847-3155

November 28, 1983

[illegible]

Mr. Paul Alexander
Staff Director
Senate Select Committee
on Indian Affairs
640 Dirkson
Senate Office Building
Washington, D. C. 20510

Re: White Earth Indian Reservation Land Claims Bill S85

Dear Mr. Alexander:

At the hearing on the above bill, you requested some information regarding land on the reservation subject to claims. In Becker County, the Department of the Interior informs us that they make claims against 5,392 acres of county land. This land is mostly wooded recreational land and is used for public hunting, public recreation and fuel wood and timber sales. Upon receiving notice from the Department that claims were being made against these tracts, the County discontinued any timber sales on the property. In the year preceding the discontinuance, the County received income from these tracts in the amount of $2,664.50.

Very truly yours,

JOHN E. PEARSON
Becker County Attorney

James D. Sinclair
Ass't County Attorney

JDS:sde

Mr. **Alexander**. Earlier in the testimony the State legislative representative indicated that, at least on a State level, the State was willing to consider some contribution to a potential settlement. In other parts of the country, both local governments and State governments have been participants in settlements. Do either of your counties feel it would be appropriate for you to participate in a settlement by making some contribution to a settlement fund, or land, or any other way?

Mr. **Kraker**. I will defer to my chairman on that one, if it is appropriate.

Mr. **Kahlbaugh**. I guess my opinion there is, it depends on where the land is located, the value of it, and who is making use of it at this time.

Mr. **Alexander**. Therefore, it is not precluded?

Mr. **Kahlbaugh**. No.

Mr. **Sinclair**. I think I can speak to that point, that it would not be precluded. The area that we are talking about is an economically depressed area. I do not think there are going to be any funds available to contribute. As far as lands are concerned, I do not think that we would preclude that from discussion.

Mr. **Alexander**. Thank you.

Senator **Boschwitz**. I was just consulting with the head of my legislative staff, Dan Meyer, who has been involved in this, whether it is realistic to hope that we can get this done within the next year. Even if the first step, the clearing of the titles of the land, would be the first thing achieved and the formula for the compensation would be incorporated in our legislation, how to go about finding the folks to be compensated seems—from what we just discussed up here and the figures that you gave me, Paul—it would almost cost more to go out and find these folks than to pay them.

I am not sure how all that can be resolved but I am sure that people of good will can indeed get to the root of the problems. Considering the problems that we have to deal with up here, we should be able to move forward with this. The only slowing down that I see is that land claims are always litigated at length. I practiced law for about 1½ years, and that was enough. I was involved in a bunch of land claims, which was part of the reason that I went into business.

However, it is something that I have a sense of urgency about. Again, I think perhaps you were at that meeting, some of you, that took place some years ago when I first became a Member of the Senate. As I believe you said, emotions were high, and my emotions would be high too in the event that the title to my land were clouded after perhaps a couple of generations. As I look at some of the testimony, particularly that of Mr. Bruns, apparently there have been other efforts to clear those land titles and they haven't been successful. It must make the transfer of property up there, as Mr. Sinclair alluded to, very difficult. It would make lending also very difficult.

Therefore, I will do my best to see that we can obtain a solution to these problems, and hopefully to do so in this session of Congress. That gives us another year. Otherwise the process just starts all over again, and you will be making another trip and saying much the same thing, and it will just be further removed from the dates that all this took place, even though it is now already quite far removed. Therefore, we pledge our desire, and I will speak to the chairman, who I see very often, about my desire to move this thing along. The legislative process is seldom fast but we will try and push it as quickly as we can.

I have to apologize to Bob Bruns, Ann Schoenborn, Lori Bruns, Joy Viker, Mr. Schaumberg, and Vernon Bellecourt. I have looked at all of the testimony that you are about to give. I am interested to see the problems that some of you, as farmers, are having. I did not see the testimony of Mr. Bellecourt, and perhaps he will submit that and I will look at that later. However, I have to apologize at this point, and go over to the House side and then come back here, because some farmers just north of you are having some problems due to excessive rains over 3 years in a row and we have to be of some help to them as well.

I appreciate your coming. I have not been to Mahnomen for quite some time, and really should get back there to get a little bit closer to the ground and to the problem. I have been in Detroit lakes a number of times, recently included, but I will be up there and I will do what I can to resolve these problems because I would not personally like to own land that had a cloud on it. I think just compensation, on the other hand, should be forthcoming. I think that we should be able to work out the conflicting interests without too much problem.

Paul, do you have any comments? I really need to go.

Mr. **ALEXANDER** [presiding]. Fine. We will continue to take the testimony.

Senator **BOSCHWITZ**. My legislative director, Dan Meyer, will join you and perhaps will ask some questions as well. I thank you very much.

Mr. **ALEXANDER**. Thank you for coming.

We have six witnesses yet this morning, and we will probably take them about two at a time.

Gentlemen, I thank you very much for your attendance. Are there additional statements? The record will be open for 2 weeks. Thank you very much. It is nice to see you again.

I would like to call Bob Bruns and Ann Schoenborn. Welcome. You are both, I understand it, from the United Township Association. Ms. Schoenborn, would you like to begin? Do you have a statement for us?

STATEMENT OF ANN SCHOENBORN, COCHAIRPERSON, UNITED TOWNSHIP ASSOCIATION, PONSFORD, MN

Ms. **SCHOENBORN**. I will read my statement.

Mr. Chairman, I am Ann Schoenborn, cochairperson of the United Township Association. The United Township Association is comprised of townships that lie within the boundaries of White Earth Reservation, which is all of Mahnomen, parts of Becker and Clearwater Counties. We are bound together by a joint powers agreement, so as to enable the townships to speak with a united voice. Townships are grassroots government. They represent all people.

I have letters from my township officers, and I ask permission to introduce them at this time as written testimony.

Mr. **Alexander**. They are included in the record, as introduced.

Ms. **Schoenborn**. We were here also, United Township Association, and each time we were here we brought books, and we have a section in each book on land claims. We ask permission to submit this and other pertinent sections as written testimony.

Mr. **Alexander**. Fine.

Ms. **Schoenborn**. Thank you. Attached to the copy of my testimony are two of the township letters.

What the township officers have said in their letters is that there is a problem, that it affects people's lives, and it must be solved. The residents in a township have a special bond. They are neighbors and friends. Even though you may not have a clouded land title, these land claims affect you because you are part of the community.

The solution is legislation. Problems this legislation in clearing land titles would solve are alleviation of emotional stress; create marketability; create mortgageability of land; stop the depression of land values; improve the business climate; and compensate the original allottees or their heirs. Legislation would maintain harmony in our community.

Legislation is meant to solve and not to judge. This legislation states that there are clouded land titles within White Earth due to investigation for trespass claims. It does not judge which claims are valid and which are not. Court action would determine, within the framework of current law, the validity of each claim. The damage to our community economically and socially makes court action unacceptable. You can repair a community economically, but that would take decades. Repairing a community socially would take generations, if at all possible.

We, the United Township Association, petition the U.S. Congress to accept the responsibility in permanently resolving these White Earth land title problems by passing legislation that is fair and equitable for the original allottees or their heirs and the landowners who purchased their land in good faith. We thank you for holding these hearings, which we view as an important step toward a settlement of these claims. We also wish to express our appreciation for the opportunity to testify in support of Senator Durenberger's bill, S. 885.

Mr. **Alexander**. Thank you.

[Letters submitted by Ms. Schoenborn follow. Testimony resumes on p. 170.]

Ogema, Minnesota 56569
November 10, 1983

Senate Select Committee on Indian Affairs
Senator Mark Andrews, Chairman
Senate Hart Building 838
Washington, D. C. 20510

Dear Senator Andrews:

Re: Senate bill S-885 hearings:

Uncertainty over status of land titles compounds the problems of White Earth Reservation landowners who are already in economic distress due to the poor farm economy. Land values are depressed, yet no tax relief is apparently available to affected landowners.

Older farmers who wish to sell their land either can find no one willing to undertake the risk of buying land on the Reservation or have to accept significantly lower prices.

Example A: Walfred Burk, semi-retired farmer, experienced difficulty in selling 80 acres of his land, in which $10,000 of the down payment was withheld pending clearing of the title. Over a year has passed without a legal decision yet reached. In previous land transactions dating back to 1919 the title had always been considered clear.

Example B: Mrs. Edgar Ballard, a widow, finds that she is unable to sell a portion of her farm as she desires to do. Only the 80 acres of the Ballard farm on which the farmstead is situated has a clear title. Titles are in question on the remaining 635 acres of the farm.

Young farmers seeking to buy land on the Reservation are frustrated by the title problems. Additionally, those seeking to expand their operations are often unable to raise capital by mortgaging their present holdings on the White Earth Reservation.

For the above stated reasons, Spring Creek Township landowners are in favor of a legislative resolution of this complex land claims problem. Legislation could clear up the entire issue, much preferable to a tedious and expensive claim-by-claim litigation in the courts.

Very truly yours,
Spring Creek Township

Dennis Groth
Dennis Groth, Chairman

Walfred Burk
Walfred Burk, Clerk

FOREST TOWNSHIP
PONSFORD, MINNESOTA 56575
ESTABLISHED 1979
BECKER COUNTY

Nov 13, 1983

Senator Mark Andrews
Select Committee on Indian Affairs
Senate Hart Building #835
Washington D.C. 20510

Dear Senator Mark Andrews

We the residents and taxpayers of Forest Townships, in Becker County, on the White Earth Reservation are writing to you in regard of Nov. 17, 1983 Hearing on Bill S 885. We would like legislation to solve our land claim problem. We feel we are being discriminated on our civil rights, have no market value on our property, our land value is depressing, it envolves a lot of emotional stress when we try to sell our property. We find our land value down.

Please help us! Court action could cost us so much more, than we have already spent, and it could go on for years.

Thank you.

Sincerely yours,
Don Tschudi
Clerk of Forest Township

Senate Select Committee
on Indian Affairs
Chairman Senator Mark Andrews
Senate Hart 838
Washington, D.C. 20510

Dear Senator Mark Andrews,
RE: Nov 17, 1983 Hearing on S885

The uncertainty of the land titles has kept buyers away from this area. Some of the problems are: obtaining loans, increased legal costs, and uncertainty of future value.

The present land owners are faced with emotional stress. They do not know if they will own their land tomorow, or if they can sell it today.

Our township strongly favors legislation to solve land claims problems.

Township of Maple Grove
Becker County

Arvid Johnston - Chairman
David Safar
Michael Brakefield

November 11,1983

Senate Select Committee
on Indian Affairs
Chairman Mark Andrews
Senate Hart 838
Washington, D.C. 20510

Dear Mr. Andrews,

At our November meeting the subject of the hearings on S883 came before the Board. Most members of our Board are Farmers, although the Township that we represent contains the Village of White Earth with a population of approx. 500 Chipewa Indians. Please take a minute of your time to read the concerns of our Township and it's people.

It is time for a permanent settlement to our land title problems. Deeds (accepted in good faith) that are not marketable, amount to fraud by our Government.

The person who happens to own clouded title land should not be penalized because of past events with which he had nothing to do with. This land now has no mortgageability (it cannot be borrowed against) and it is not marketable. We feel that the Federal Government should insure loan mortgages on clouded title lands until a speedy settlement is reached.

Our Board favors local negociating meetings.

Settlement must be made with the heirs of allottees who lost their lands unfairly and not with the Tribe. We see much "feathering of nests" around here, and feel that a large settlement to the Tribe may be misappropriated.

Our board is also concerned with Lawyers who can be "feathering their nests" at the inconvienience and expense of actual parties involved. We need a Speedy settlement.

Sincerely yours,

White Earth Township

Curtis R. Ballard, Chairman
Gary Jacken, clerk

Round Lake Twp
Ponsford Mn.
11/12/83

Senate Select Committee
on Indian Affairs.
Chmn; Senator Mark Andrews.
Senate Hart Blg 838
Washington D.C. 20510

Dear Senator Mark Andrews.

We are writing with great concern about the problems property owners are having with their land titles here on the former White Earth Reservation. People here are having difficulty borrowing money and mortgaging land since ~~since~~ finiacial institutions such as the Federal Land Bank, Savings and Loan, and local banks refuse to loan on land that does not have clear title.

Land Values remain low because of this, yet taxes continue to rise

Old people who wish to retire can't sell their land and move causing them unfair stress.

People do not wish to buy property and move into this area making land unmarketable, those of us owning property here feel trapped.

We want legislation to solve the land Claims Controversy. We feel Senate Bill S-885 is a fair & equitable means of doing so.

Cont —

②

– Cont from page 1

We as township offices from Round Lake twp, Becker County, Ponsford Minnesota, are asking your help in solving this urgent problem

Sincerely,

Dale H Anderson Chm:
Jerry Wettel
John R. Reid

Senate Select Committee
on Indian affairs
Chairman Senator Mark Andrews
Senate Hart 838
Washington D C. 20510

Dear Senator Andrews,

We, the township board of Riceville, Becker County, MN. seek your help in solving the Indian title land claim dispute, on White Earth Reservation.

This dispute has been going on for quite a few years now. It has caused great friction between Indian and non Indian reservation members.

Our ancestors came to this open reservation hoping to settle a new land. For years we have tilled the soil and put our sweat and blood into this land. In many cases you are talking 3rd & 4th generations living on this land. It is very disheartening for us to be told we could loose this due to new rulings in the law. Im sure you would feel the same on your farm, wanting to pass it on to future generations.

If there is no federal

legislation and this has to be fought in court action, there is no way we as small goverment body, or individuals can win. We do not have the financial resouces that the Bureau of Indian affairs has, nor does it seem fair, we should have to pay double, for court action, in out of pocket cost, and through taxation.

Our local bank policy (First American Bank of Detroit Lakes) is that you need a clear title for mortgage on a piece of property. Until some of these titles are cleared, neither will a person be able to buy or sell his property if their is a land claim on it in this area.

Please help the citizens of this area with legislation to solve these problems.

Riceville Township
Clerk Richard Flottmesch
V.P. Wilhelm K. Walter
Dir. William Jorn
Treas. Bonnie Osten
Zoning. Cord. Lyle Osten

Senate Select Committee
on Indian Affairs
Chairman Senator Mark Andrews
Senate Hart 838
Washington, D.C. 20510

Dear Senator Mark Andrews:
Regarding: Nov. 17, 1983 Hearing on S-885

We as township officials are concerned with the problems facing us, dealing with land claim problems.

As land owners, it is very difficult to sell property. In our township, we have four farms for sale, and with the land claim problems, people do not want to take any chances in buying, yet as owners it is hard to get loans, as banks and mortgage companies do not want to take chances on loaning money on lands that have questionable titles.

The land values have decreased, leaving people with emotional stress. Without legislation, Court action will be required and that would bankrupt the economy of our Township, County and possibly our State.

Due to these reasons, our township is in favor of legislation to solve these land claim problems.

Township of Clover

Charles Ihrke, Chairman
Ed Trautner, Sup.
James Cha, Sup.
Marge Siedschlag, clerk
Esther Oppegard, Treas.

Senate Select Committee
on Indian Affairs
chm. Senator Mark Andrews
Senate Hart 838
Washington DC 20510

Dear Senator Mark Andrews
Re: Nov 17, 1983 Hearing S 885

We are land owners and represent all land owners in Pembina township Mahnomen County, which is part of the White Earth Reservation.

The problem of Indian land claims has clouded many land titles causing severe emotional stress by not being able to obtain a mortgage or sell the land with clouded titles, also the title insurance is impossible to obtain.

Taxation on this land is excessive due to the fact the problem land on the Reservation has a market value the same as other land, but nobody wants to buy Indian land claims property.

This unresolved issue has been prolonged by lack of action by the U.S. Dept of Interior and Congress. To settle this issue and the

Many problems it has caused we the People of Pembina twp. recommend prompt and just legislative action on the Indian land claims issue. Legislative action is recommended over Court action due to the slow prosses of the Courts, as we the land owners have suffered long enough

Township of Pembina
Mahnomen Co. Mn.
Vincent Kettner - Chairman

Senate Select Committee
on Indian Affairs
Chairman Senator Mark Andrews -
Senate Hart 838
Washington, D.C. 20510

Dear Senator Mack Andrews:

The people of Oakland Township in Mahnomen County cannot borrow money against cloudy land it is causing alot of hardships here, also the land values have gone down, there is no marketability here, we could not sell our land if we wanted to.

Without legislative action it will bankrupt our economy.

We have to pay high taxes on the land and it has no value or real estate market.

Our Township is in favor of legislation to solve the land claims problems as soon as possible.

Oakland Township
Mahnomen County
Robert Guenther

November 11, 1983

Senate Select Committee on
Indian Affairs
Chairman: Senator Mark Andrews
Senate Hart 838
Washington, D.C. 20510

Re: Nov. 17, 1983
Hearings on 5885

Dear Senator Mark Andrews:

Callaway Township officers are hearing many, many problems arising from land claims on the White Earth Indian Reservation. We know of cases where farmers wanted a loan in order to expand their operation, but were refused by Federal Land Bank and other loan establishments because of clouded titles.

We also know of lawsuits over land titles due to the failure of the land owner to produce clear title.

Due to clouded titles, the marketability of our land is very poor for the amount of taxes we pay.

We are very concerned about this critical issue for those of us that live on the reservation and have to raise our families and pay taxes here.

On this issue we feel the Federal Government should pass legislation to solve the land claim problems on the White Earth Indian Reservation.

Sincerely,

TOWNSHIP OF CALLAWAY
Becker County, Minnesota

[illegible] Chairman
Roger Winter, Clerk
Roy M. Somdahl Supervisor

Senate Select Committee
On Indian Affairs
Chairman Senator Mark Andrews
Senate Hart Bldg 838
Washington D.C. 20510

Dear Senator Mark Andrews,

Our township is in favor of legislation to solve land claims problems. The Indians should be paid for their Claims. This will cease the many law suits that have risen. The Goverment Caused the problem, the goverment can solve the problem.

The Indians have put extreme stress on the white people living on the reservation.

6. Inian land should be taxed the same rate white people lands are.

Township of Bejou
Richard Pavlick Supervisor

11-11-83
Mahnomen, Mn.
56557

Senate Select Committee On Indian Affairs
Chairman Senator Mark Andrews
Senate Hart Blg. 838
Washington D.C. 20510

Dear Senator Mark Andrews
Re Nov. 17-83 Hearing on S-885

We here in Marsh Creek township are in favor of ligislation solveing land claims where we people have a problem on our Indian land claims titles and that I am personaly involved in this trouble. I see I will have a difficult time to sell my land as well as other business on main street. Right now we have a half a dozen business places for sale and no buyers because of clouded land title. I am about to retired from farming and if I have no clear title to the farm I would have a difficult time to sell my farm which I taught I bought in good faith with the help of a lawyer. So I would like to see you move ahead with this problem in Mahnomen County, Mn.

Sincerly Yours,
Herb Weims
Mahnomen, Minn 56557

Mahnomen Minn
Nov 10, 1983

Senate Select Committee
on Indian affairs
Chairman Senator Mark Andrews
Senate Hart Bldg. 838
Washington D.C. 20510

Dear Senator Mark Andrews
R.E. Nov 17, 1983 Hearing on S-885

Due to land claims we cant mortgage our land or get a fair price when we sell. We are taxed on land that when we retire there is no market value, thus creating a great deal of emotional stress.

Our township is in favor of legislation to solve land claim problems

Townships of Chief
County of Mahnomen
M.F. Schaumburg
Clerk

Waubun, Minn.
Nov. 11, 1983

Senate Select Committee
on Indian Affairs
Chairman Mark Andrews
Senate Hart 838
Washington, D.C.

Dear Senator Mark Andrews:

The people of this township are concerned over the land claims. this depresses the land value and doesnot give them a clear title to their land. Our township is in favor of legislation to solve the land claims problems.

The Indians pay very little or no taxes, yet we have to maintain and snowplow their roads. We would like to see them pay their share.

Yours truly
Leonard Pazdernik
Chairman Lake Grove Township.

Town Board
Gregory township
Bejou, Mn.

Senate Select Committee on Indian Affairs
Chairman Senator Mark Andrews
Senate Hart Bldg 838
Washington D.C. 20510

Dear Senator Mark Andrews.

RE: Nov 17, 1983 Hearing on S-885

We, the Board of Gregory townships, Mahnomen Co Minnesota, would like to draw your attention to the fact that we need legislation to solve land claims.

We intend to keep this brief so Maybe it will be read: We realize as Chairman of the Committee you are familiar with the facts as to depression of land prices + loan values - Hard to get Morgages - low Marketability (who would buy it) but wonder if you and your fellow members realize the added stress of not knowing your title situation, in a time when farmers are already under terific emotional stress

Township of Gregory

HOWARD STEINMETZ CHM

LAURANCE OSENGA CLK

Laurance Osenga

Senate Select Committee
on Indian Affairs
Chairman Senator Mark Andrews
Senate Harts 838
Washington D.C. 20510

Dear Senator Mark Andrews
RE: Nov 17, 1983 Hearing on S885

In regards to your meeting on Indian Affairs. It is a financial burden on the people in this area, because of the inadiquacy of the legislation to pass a bill to force legislation to settle this dispute over the land.

Because of the depressed land values older people in this Community, would like to sell and are unable to because of the depressed prices. This also makes a burden on the younger generation that would like to move into or remain in the area. They are unable to buy land with a clear title or be able to get a loan on land.

Why should the people of this area have to keep paying taxes on land that they can't get a clear title on, and be able to sell it if they want, or go ahead and develope there land. If they go ahead and spend the money and clear there land for fields & etc. and end up not being able to keep the land.

If legislation doesn't pass a bill to settle this dispute the people will have to take Court Action upon themselves, and most people can't afford it. The people bought this land in good faith and have been paying taxes on it, why should they have to be burdenid with the emotional stress of not knowing if they will wake up and have there land.

We the people of the Island Lake town board urge you to try and get legislation on this affair as soon as possible.

Sincerely yours

Anthony Marcuske Chairman
Ralph Anderson Supervisor
Linda Klinkhammer Clerk

Mahnomen Minn.
Nov. 10, 1983

Senate Select Committee
on Indian Affairs
Chairmen Senator Mark Andrews
Senate Hart Building 838
Washington D.C. 20510

Dear Senator Mark Andrews
RE! Nov. 17, 1983 Hearing on S-885

I am interested in getting the land titles on the White Earth Indian Reservation cleared up so that a person can sell with a clear title. As it is I am paying taxe on land valued for then I can get for it. I feel that the federal government made the land sales to us so they should straighten it out. Our township is in favor of legislation to solve land claims problems.

Township of La Prairie
Frank Snobl supervisor

Senate Select Committee
on Indian Affairs
Chairman Senator Mark Andrews
Senate Hart 838
Washington D.C.

Dear Senator Mark Andrews;

Re: Nov 17, 1983 Hearings on 5883

I am very concerned with the affect the "Indian Affairs" are having on our township. We can't mortgage our land, farms, or homes because they claim we don't have a clear title to our land. The value of our land is way down, yet people won't buy our land. When somebody does decide to buy the land, they can't get a loan because banks won't give loans for so called "Indian Land". The farmers, especially those with small farms, that are reaching retirement age have alot of emotional stress. They can't sell what they have and they have nothing else to live on. What are they suppose to do? How can they survive?

The economy could not with stand a court action, which will be required without legislation. Our township is in favor of this legislation to solve land claims problems.

George Guenther
Chirman La Garde Township

November 10, 1983

Honorable Mark Andrews
Chairman
Senate Select Committee on Indian Affairs
Senate Hart Building 838
Washington, D.C. 20510

Dear Senator Andrews:

Subject: November 17 Hearing on S 883

Indian Claims against property on the White Earth Reservation are creating serious problems for the private owners concerned. Property without clear titles is neither marketable nor will lending institutions, including the Farmers Home Administration, grant a loan on such property. The Indian claims have depressed market values and created a dilemma for landowners.

Many owners, including the elderly who wish to retire, cannot sell property because of clouded titles resulting from unsettled claims. Farmers have lost lines of credit necessary to their operations. The economic hardships caused by Indian claims have created an emotional crisis for landowners: They cannot sell; they cannot borrow; and the counties will not provide any tax relief to help alleviate the situation.

November 10, 1983 Page 2

When the government opened the White Earth Reservation to settlement and ownership by non-Indians, they inadvertently created or allowed the situations which the Indian claims are based upon. For this reason, we feel that it is the duty of the government to enact legislation which will fairly and equitably resolve Indian claims for all parties concerned.

Litigation by private parties to clear land titles would not only be lengthy and expensive, but some settlements would be impossible. Most private landowners simply cannot afford these lawsuits.

We not only support S 883, we urge its passage. The private landowners have been burdened with a problem which they themselves cannot solve for long enough.

Yours truly,

Betty Saarinen, clerk
Pine Point Township
[illegible] Rooney - Supervisor
[illegible] Keir Supervisor
Roger E Weimer
Supervisor

Nov 10, 1983

Senate Select committee
On Indian affairs
Chairman Senator Mark Andrews
Senate Hart Bldg 838
Washington D.C. 20510

Dear Senator Mark Andrews.

The Town Board of Heier Mahnomen county and the people of our township and county are very concerned about the land claims and dat it is putting a great deal of stress on some people also it is very hard to get loans on the land with the clouded titles on the White Earth Reservation and also fear of losing there land we would like your help on these problems

Thank you

Town Board of Heier
Chairman Kenneth M Larson
Fosston Minn

Mr. **Alexander**. Mr. Bruns, do you have a statement for us?

Mr. **Bruns**. Yes, I do.

Mr. **Alexander**. Thank you.

Mr. **Bruns**. Nice seeing you again, Paul.

Mr. **Alexander**. Nice seeing you.

STATEMENT OF ROBERT J. BRUNS, CHAIRMAN, UNITED TOWNSHIP ASSOCIATION, PONSFORD, MN

Mr. **Bruns**. Mr. Chairman and committee members, I am Bob Bruns, chairman of the United Township Association. Thank you for allowing me to testify on behalf of the townships in support of this legislation.

Land claims on White Earth are not a racial issue, as there are claims against the land held by tribal and nontribal members, State, county, Federal, township, and tribal governments.

The people living at White Earth today are not guilty of any violations pertaining to the land claims. These claims are from the early 1900's, and there have been several generations of landowners on these lands since that time. The present landowners bought their land in good faith. At the time of purchase these titles were legally clear. How can they be held responsible for these claims?

History does repeat itself. In 1910 a complete investigation of fraud on lands at White Earth was initiated by the Indian Commission, and soon the Department of Justice and the Attorney General were involved. On November 12, 1920, the court docket was cleared of all claims due to an out-of-court settlement.

Mr. Chairman, I would like permission to enter some testimony that I did not have extra copies of. It comes from Folwell's History of Minnesota, volume 4.[1] I also noted that the Reservation Business Committee was also quoting the same pages, so I feel that it is pertinent that it be introduced.

Mr. **Alexander**. Fine. We will accept it for the record.

Mr. **Bruns**. In a random sampling comparing the list of claims recorded in the Federal Register in March 1983 with the list from the investigation of 1910, we have found duplication of claims. You have attachments to our testimony. This is the second time in 70 years that White Earth allotments have been investigated.

It is reasonable to assume that the Federal Government failed in its duty as steward of the Indian lands, and should have legislatively corrected the situation at the end of the 1910 investigations by sending out guidelines to the State and local governments, instead of leaving the problems to compound themselves and allowing the local units of government and landowners to bear the burden. Therefore, we feel this legislation is the best solution to settling the land claims at White Earth while protecting the rights of individual heirs.

Also, Mr. Chairman, I noticed this morning while listening to the testimony that everybody talked about the Nelson Act of 1889 and the Clapp Act of 1906. We have looked at quite a few abstracts within the area, and we find also there was an act of Congress dated May 27, 1902, that stated that:

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[1] Retained in committee files.

> The adult heirs of any deceased Indian to whom the trust patent or other patent containing restrictions upon alienation has been or shall be issued for lands allotted to him, may sell and convey the lands inherited from such decedent, subject to the approval of the Secretary of the Interior, and when so approved shall convey a full title to the purchaser the same as if a final patent without restriction upon the alienation had been issued to the allottee.

Now this is on page 275 of the appropriations bill. I do not have that here because I did not realize that we were going to be entering it as testimony.

Mr. **Alexander**. We will accept it for the record, and it will be open for 2 weeks.

Mr. **Bruns**. OK. Thank you very much.

I would like to thank you for allowing me to testify on behalf of the township governments.

Mr. **Alexander**. Thank you.

[Material submitted by Mr. Bruns follows. Testimony resumes on p. 178.]

Becker County Historical Society
915 Lake Avenue
Detroit Lakes, MN 56501

November 14, 1983

Robert Bruns
United Township Association
Whaley's Resort
Ponsford, MN 56575

Dear Mr. Bruns:

During the check of the allotments on the Federal Register list (March 31, 193) which you requested I undertake, several very interesting things came to light. First, finding claims on allotments which had numbers listed as N/A I pulled a dozen names at random and found, within fifteen (15) minutes, allotment numbers for eight (8) of them plainly listed in an index to the Status Roll.

Here follows that information:

Case	Allotments	Allottee
1337	0-655, A 512	Wm. Paul
1351	0-2114	Simon Bellanger
1352	0-4816	Edith Libby
1353	A-2490	Edith Libby
1318	0-1271	Mary Blair
1319	0-3441, A-1917	Elza Pemberton
1321	0-1205	Charlotte Johnson
1344	0-4412, A- 635	Luella B. Morrison

I then made a very rudimentary index to the listing in the Becker County Historical Society archives of cases tried while the Status Roll was being established. My assistant and I found several categories; cases marked "fee sample," cases marked "clear," and cases marked "S" among them. We chose these three categories to compare to the claims presently being made. Our goal was to ascertain if any claims existed against these previously tried, and presumably settled, allotments. The results were positive and three lists are attached ("A", "B", and "C") containing the case and allotment numbers of present claims which fell into the aforementioned categories.

Several other types of discrepancies were also found during the course of our search. For example, case number 0912, allotment 4700, allottee Eliza Bugg. In no other document in the Becker County archives do I find this name as allottee for this allotment number. In the Status Roll the allottee is Nay tun e eg shig o quay and the index does not list Eliza Bugg at all. This name is also allottee in case number 1346 for which no allotment number is available. We found several instances in which the same allotment had several claims against it presently. Notable in category is allotment number 1218 which is involved in cases number 1396, 1397, 1398 and 1399. Cases 1396 and 1399 are both township road in trespass claims while 1397 and 1398 are both county road in trespass claims. Allotment number 298 has three (3) claims against it; allotment 309, three (3); 545, three (3); 1207, three (3); 3133, three (3); 3977, three (3) all for tax forfeiture; 4097, three (3); 4177, three (3); 44106, four (4); 4545, three (3); 4725, three (3); and 5175, three (3). Numerous allotments have two claims. Our time was too limited to ascertain all case numbers for the foregoing.

We hope this information is helpful to you.

Sincerely,

Merry J. Coleman

Merry J. Coleman
Director/Administrator

MJC:mk

A. Cases previously tried; noted "fee simple" and presently being claimed.

Case	Allotment	Allottee
0049	1189	D. B. Knickerbocker
0828	2427	O mah mah je wun
0914	4182	Nah be gwam
1209	4182	Nah be gwam
0033	155	Angeline Manypenny
0498	685	Bay tah o wub equay
0660	705	Fred Smith

B. Cases previously tried; noted "clear" and presently being claimed.

Case	Allotment	Allottee
0123	389	O gick aunce
0271	666	Ne zho dain
0536	1027	Shay day
0661	1078	Pay she go be quay
1637	1158	Sherman Fairbanks
0659	1180	Eva Muchtler or Eva Muchter Breit
0009	1711	Ay dah wah nun igo guay
0642	1808	John Sloan Rock
0730	1932	Ah zho we ah cumig
0322	2041	Ne zhe cay we gah bow
0323	2042	Sah gutch e way be quay
0403	2141	Bay bah daun gay aush
0527	2292	John Pe daus e gay
1155	2481	Arthur Gray
0085	2492	Waus ah we gun
0854	2783	Mrs. John Coleman
0060	4007	Pe daum (or Kaun) ah quod
1237	4730	Ne gaun w be nais
1134	4901	Tah wub
1095	4925	Oze mah we gah bow e quay
1176	5017	Mah ko day

C. Cases previously tried; noted "S" and presently being claimed.

Case	Allotment	Allottee
0247	1978	Ah suma ge wabe
0683	1789	May maush kow e benais eak
0867	2086	Pah oom be gwon a bequay
0036	1688	Kay dah ge gwon ay yaush
0337	1754	E ne nee
0698	2521	May shaw ke no din o quay
0089	3784	Wah yay quah ke shig
1246	4479	Antoine Smith
0207	2055	Mary Merchant
0041	463	Lizzie Lyon
0687	1915	Kay she way way auch
0562	2743	Cheeng wah cumig un eak
0917	4356	Sah maush e quay
1135	4994	Ko de quah ko jeence
0327	396	Josephine Madison
0846	612	Frederick Coleman
0032	703	Kah nish o be quay
0568	1115	Min de mo yahn
0155	2054	Ah be tun wish ud
0247	2278	Oge mah wah ge way aush
0926	2333	Robert May zhuc e bi nais
0817	2357	Mo kah je way
0952	2864	Shaw wun aush e quay
1194	2900	Ke che un nung
0643	3027	Weiss
0991	3405	Robert Wolf
0250	3424	Ke che ay ne waush
1184	3936	Tuh e gun
1096	4983	Charles (Charley) Nodin Joe Kegg

Clear		0-185	2800		10-11-19	George Walters
		0-222	3052^{00}			Lizzie Song way way
C Hammerstrom		0-225	800	900	6/12/18	Eva Sang way way
J. P. Rodgers et al	S	0-241	200	46	2/28/08	Angeline Badboy
Becker CO. Ld & L.Co		0-248	600	$100 on 248, 249, 252	6/1/06	Josette Foster
Becker Co.Ld & L.Co		0-249	181.25	See 0-248	6/1/06	William Foster
B L Fairbanks	S	0-250	1200	400	4/25/06	Wah ah bish kin de b
Anundsens, et al		0-252	800	See 0-248	6/1/06	Joseph Foster
		0-257	2000			Min de monien
Fee Simple		A-280	T 200		10-11-19	On don ge gah bow e
Fee Simple		A-290	T 200		10-11-19	Benj. Caswell (0-3
Fee Simple		A-291	240		10-11-19	Stephen Caswell (0
Fee Simple		A-295	T 400		10-11-19	David Martin (0-3
Clear		A-297	449.25		10-11-19	O gick aunce (0-3
		A-298	900			Kah be nung we we
Fee Simple		A-300	200		10-11-19	Wah bun nung o qua
J. B Schermerhorn	S	A-301	800	900	9/29/17	Geo. Madison (0-3
J. B Schermerhorn	S	A-302	800	900	10/4/17	Josephine Madison
		A-318	280			Sophia Agnes (

-2-

The United States
of America
-to-
Aysh quay be tung or
Frederick Keass, a Chippewa
Indian belonging on the
White Earth Reservation

CERTIFIED COPY OF TRUST PATENT,
No. 2799
Book 67 of Deeds, page 171
Dated December 30, 1902
Filed March 12, 1931, 10:00 A. M.

Conveys in trust the Lots Nos. 4 and 5 of Sec. 30, Twp. 142N., Rge. 38, W. 5th. P. M. in Minnesota, containing 56.15 acres. Patent issued pursuant to a schedule of allotments of land deposited in the General Land Office of the United States, dated Feb. 26, 1901, from the Commissioner of Indian Affairs approved by the Secretary of the Interior Feb. 23, 1901, whereby it appears that under the provisions of the Act of Congress approved Feb. 8, 1887 (24 Stats. 388), and under the Act of Jan. 14, 1889 (25 Stats. 642) the said Indian was allotted the said above described lands.
Signed, By the President: T. Roosevelt, By F. M. McKean, Secretary, C. H. Brush, Recorder of the General Land Office. --Seal.
Duly certified as a true and whole copy on Aug. 17, 1929, by M. P. LeRoy, Recorder of the General Land Office, under seal thereof.

-3-

The United States
of America
-to-
Whom It May Concern

The title to the lands embraced in the within Abstract of Title comes within the purview of an Act of Congress approved May 27, 1902, which provides as follows: "That the adult heirs of any deceased Indian to whom a trust patent or other patent containing restrictions upon alienation has been or shall be issued for lands allotted to him, may sell and convey the lands inherited from such decedent, but in case of minor heirs, their interests shall be sold only by a guardian duly appointed by the proper Court, upon the order of such Court made upon petition filed by the guardian, but all such conveyances shall be subject to the approval of the Secretary of the Interior and when so approved shall convey a full title to the purchaser the same as if a final patent without restriction upon the alienation had been issued to the allottee, all allotted land so alienated by the heirs of an Indian allottee and all lands so patented to a white allottee shall thereupon be subject to taxation under the laws of the State or Territory where the same is located. Provided that the sale herein provided for shall not apply to the homestead during the life of the father, mother, or the minority of any child or children."

-4-

Sha-go-dah-se-gake and May-dway-we-nind, her husband (Both sign by X marks), (Heirs of Aush-quay-be-tung or Frederick Keoss, deceased, a Chippewa Indian)
-to-
Geo. D. Hamilton

INDIAN DEED, Inherited Lands
Book 19 of Deeds, page 520
Dated June 7, 1905
Filed March 3, 1906, 10:00 A. M.
$231.34

Conveys:- Lots Nos. 4 and 5 of Sec. 30, Twp. 142N., Rge. 38, W. 5th. P. M., in Becker County, Minnesota, containing 56.15 acres, more or less.
Endorsed: Indian Office, Department of the Interior, Office of Indian Affairs. Nov. 13th, 1905. The within Deed is respectfully submitted to the Secretary of the Imterior with the recommendation that it be approved. (Signed) C. F. Larrabee, Acting Commissioner. -Department of the Interior, Nov. 23, 1905. The within Deed is hereby approved. (Signed) Thos. Ryan, Assistant Secretary. Two witnesses. Ack'd June 7, 1905, by Sha-go-dah-se-gake and May-dway-we-nind, her husband, before G. L. Scott, Major 10th Cavalry, Indian Agent, Leech Lake Agency, Minn.
Ack'd June 7, 1905, by Sha-go-dah-se-gake and May-dway-we-nind, her husband, before Daniel De Lury, N. P., Cass Co., Minn. --Seal. Com. expires April 11, 1911.

Mr. Alexander. One of the points of your testimony that I would like to clarify, Ms. Schoenborn, is your point No. 6: compensate the original allottee or their heirs. In your view, I would like you to comment on the proposal made by the tribe that a tribal entity, as part of a settlement, manage an economic development fund and/or a land base. Would you support such a step if it would clear titles, or would you be opposed to such a step?

Ms. Schoenborn. We have not really presented that to our township officers, so speaking on behalf of them, I could not.

Since you brought up land trade, I do want to make one point on this. They used the words, "viable, economic land." In a land trade we have more problems than land claims, and one of them is tribal jurisdiction, where reservations throughout the United States, tribes, tribal governments, have gained jurisdictional control, civil jurisdiction, over nontribal members on the reservation. One of the reasons, the basis for this jurisdiction—and it was listed in a legal opinion on the Umatilla reservation in Oregon—was a checkerboard situation.

This is kind of a caution on what can happen in trying to solve land claims. In trying to solve land claims, it could be expanded to actually put us under jurisdictional control. In other words, right now we do not have a checkerboard situation of trust land and simple fee patent land, 94 percent nontribal, 6 percent tribal land. If through the process there did develop a land trade and it created a checkerboard situation, if it made a checkerboard situation in solving land claims, it would bring problems for the people within the reservation and we could visualize a legal opinion written saying, "Because of a checkerboard situation, this is a reason to put the nontribal members under the jurisdiction of the Tribe." I did want that in the record, that it has happened on other reservations.

Mr. Alexander. Therefore, your concern would be jurisdiction, not necessarily any return of a particular parcel of land or a particular economic development fund. Is that a fair statement?

Mr. Bruns. Do you mind if I talk?

Ms. Schoenborn. Go ahead.

Mr. Bruns. Our concern is that if there is land exchanged, that it be a block piece of land, and that treaty rights may be excerised only on lands owned by the band or held in trust by the United States. Treaty rights may not be exercised on fee patent land or on land, water or air that is held in public domain. To allow treaty rights to be exercised on all lands within White Earth is to sanction socialism within the boundaries of the United States and the State of Minnesota.

Our main concern is with protection of the heir's constitutional rights. They have individual rights under the Constitution where they cannot have their land severed without legal and just compensation.

Many of the heirs are not members of the band and, therefore, if there is a settlement where the land would be given to the band instead of the heirs, it would be a violation of their constitutional rights. Even the members of the band, the heirs that are members of the Band, would have to give a power of attorney to the tribe in order for this to be legal. We are concerned—what about all the heirs? Would we, in clearing the titles at this time, thus create a barrier that would bring land claims back again?

Mr. **Alexander**. Well, let me assure you that in any solution that Congress would fashion, Congress would not deliberately fashion a solution that would not pass constitutional muster. I am a little confused, because I would imagine that your main concern would be clearing the title of what everyone has defined as the innocent third parties.–I am surprised to hear you speak. Do you represent the allottees in any way, shape, or form?

Mr. **Bruns**. Township government is the grassroots government for people, and the concern of that area is for all people. There are no barriers there. It is a complete community, and we would like to keep it that way. Innocent parties are both tribal and nontribal members. Therefore, we feel that the allottees must be compensated to protect their rights and to keep this problem from surfacing again.

Ms. **Schoenborn**. So much we have heard today has separate Indian and non-Indian. When you have a community like ours it is very difficult to separate. For example, they were talking about minors selling the land. For example, my husband's aunt, who is also his godmother, was a minor. She married Joseph Schoenborn. She sold her land to her father-in-law, Christian Schoenborn. She was a minor. Her parents helped sign, but because of this, now the land—80 acres she sold—is under question. She is an original allottee, and she is still alive. Therefore, how do you separate a community into Indian and non-Indian? It is very difficult, if at all possible.

Mr. **Alexander**. Very difficult.

Mr. **Bruns**. Yes. The Department of Justice would be a good one to appoint a task force to represent the rights of nontribal members who are heirs to this land. The Bureau of Indian Affairs only has a responsibility to tribal land members, and they will work very hard for a settlement that will work toward settlement for the tribal member, but will they also work hard to protect the rights of the heirs who are not members of a tribe or of Indian ancestry?

Mr. **Alexander**. Dan?

Mr. **Meyer**. I have met with Bob and Ann enough, and I know that we have discussed this enough that it is not necessary for me to ask any questions. However, just for the sake of the committee who will be reviewing the transcipt of this hearing, let me just follow up and make sure that one point is clear: Chairman Andrews in his questions to the attorney general, and subsequently Paul in his questions to the county officials, have been asking questions with respect to the willingness of the State to participate in a solution—meaning land, reading between the lines—and the counties as well. Just to clarify, if there were a solution worked out where there was a land exchange en bloc, county land, State land, whatever could be worked out in exchange for clearing these titles, you folks would or would not oppose that? What would be your viewpoint on that?

Mr. **Bruns**. I would like to interject a personal opinion in here. First of all, we have heard from the Government, everybody that has sat here, their concern over how much it is going to cost to compensate the heirs; not so much the money that is going to the heirs but the money that is going to be used administratively. Now if these people were wronged or their ancestors were wronged, is the cost that big a factor? Is that an excuse to sidestep their rights to be compensated?

In a State and county land exchange, the Bureau of Indian Affairs sat right here and said for 60 years that they did not feel that they were responsible for probate. After 60 years they came right back and then said, "We are responsible. We are going to bring charges." The State of Minnesota was innocent. The counties were innocent.

Becker County, for instance, sells timber off this tax-forfeited land. Who owns this land? Is it the county government, the State government, or is it the people from the State of Minnesota or the county? Does the Federal Government have the right to come in and take this land from the public? That is our main concern.

The Federal Government made this mistake. Should the people of Minnesota or the people of Becker County be the ones to suffer, or should this be distributed across the whole Nation, so that the Indian people that were wronged by the Federal Government will be paid by the constituents throughout the United States? A monetary settlement would be the most expedient and fairest solution for the present land owners and heirs.

I am finished.

Mr. **Alexander**. Thank you very much for the long trip to Washington. We appreciate your testimony. Thank you for appearing.

I got a little out of order. Our next witness is Vernon Bellecourt.

Please come up to the table with the mikes. Could you introduce yourself and your affiliation? I understand you are affiliated with an allottee organization.

STATEMENT OF VERNON BELLECOURT, REPRESENTING ANISHINABE AKEENG, AN ASSOCIATION OF WHITE EARTH NATION ALLOTTEES

Mr. **Bellecourt**. Yes. My name is Vernon Bellecourt. That is spelled B-e-l-l-e-c-o-u-r-t. I am the representative here at this hearing, representing the organization Anishinabe Akeeng. I guess I should take a moment to spell that: A-n-i-s-h-i-n-a-b-e A-k-e-e-n-g. Anishinabe Akeeng, of course, translates to "the people's land," and I will just read a little of the articles of incorporation to tell you what this organization is all about and the purposes, of course, of my being here will be explained there.

> We, the undersigned, Anishinabe Akeeng, being an organization open to and comprised of allottees and heirs of the Act of March 19, 1867, and natural heirs to the land of this area, therefore governed under the natural law of the Great Spirit and in honor of Mother Earth, does hereby organize as an association of the White Earth Chippewa Nation.
>
> The purpose of the corporation is to promote the cultural and spiritual heritage; to participate and develop meetings, solutions, and plans for the restoration of our lands and reclamation of our Nation; to promote and defend the 1867 treaty of the Mississippi and all other treaties pertaining to the White Earth Anishinabe.

Mr. Chairman, the people that are directly affected by both the hearing that was held by Interior and Insular Affairs Committee yesterday and the hearing today are, in fact, the heirs and the original allottees of the land that is in question. It is unfortunate that because of the economic conditions that our people are faced with, that they could not, more of them, come here to testify before these hearings. I am sure the same is true of the other persons who are here testifying, particularly the private landholders, that they probably are having the same type of economic difficulty in coming to these hearings.

In view of that we would hope that, as we move forward in other hearings that might be held on this very important issue, that the committee may choose to hold these hearings up on the White Earth Reservation. I guess I could say, the scene of the crime itself. They say that the thief always returns to the scene of the crime, and in this case the Federal Government, which is very much responsible for allowing this to happen, as well as State public officials and county public officials—many of them who have testified are here—their counterparts back in the early 1900's all played a very big role in what historians refer to as having the appearance of a systematic and premeditated scheme to defraud the Chippewa of the White Earth Reservation out of their lands and resources.

What makes this particular case unique, unlike other land cases across the country, we are not talking about lands that were ceded. We are talking about what is left of our Nation, the lands within the 1867 treaty boundaries. Beginning with the Nelson Act in 1889, and again the Moses Clapp amendment and the Steenerson Act, these are part of this systematic scheme, what at least had the appearance of a systematic scheme to defraud our people out of their lands. It is for that reason that our people have suffered the worst economic hardship and conditions of poverty over the years, because of the loss of this land.

As I walked in here, particularly when I heard Senator Boschwitz talking about how emotional he would be if he found that there was a cloud on the title to his land, I wonder if the Senator realizes how emotional our people are when they found out that they were systematically swindled, embezzled, and defrauded of their land? Therefore, our people are also very emotional about this issue for that reason.

While there have been others who have all tried to place the total blame on the Department of Interior, I think it goes beyond that. If we are going to place blame, I think we have to look at the fact that while perhaps the people that are testifying here today themselves were not participants in this fraud, in many cases their parents and their grandparents knowingly participated in swindling some of our grandmothers and grandfathers out of their land. I am not saying specifically these people, but I am talking about the interests, the special interests that they represent.

Again, I do not know why the Senator would be hesitant to have the State involved in restoration of so-called State lands that were taken, many times through illegal means, to have the State participate in not only paying damages to our people but restoring land as well. I have not heard, in yesterday's hearing and today's, much talk about clearing title on behalf of the rightful, legitimate landowner. I only hear talk of clearing title on behalf of the current landholders. I say landholders because a defective title is a defective title, whether it be between an Indian and a black, an Asian and a white. In this case it happens to be between white and Indian, so the race has nothing to do with it.

The issue is defective titles. No doubt a court would clear many of these titles on behalf of the legitimate owners, the Indian heirs, and would also assess a tremendous amount of damages, and so when we are talking about the cost of a bill it sort of irks me to hear this kind of discussion. Particularly they ought to understand the cost that it has been to our people, the economic hardship and, I will reiterate, the suffering because of this poverty.

Therefore, I would like to think that this committee might now want to be talking about a Durenberger-type bill, such as the Boundary Waters Canoe Area buyout bill where resorters and other landowners were bought out. I would think that this would work well here. I hear testimony about the terrible problems they are having with conveying title, with borrowing money on their land, the terrible problems they are having with the fact that tribes are gaining a certain amount of control over jurisdiction, taxing, and other issues which are rightfully ours.

Therefore, we feel that in view of that we have to be talking about a bill that is not only going to assess damages against the responsible parties on behalf of the rightful Indian heirs and the allottees for the millions of board feet of timber that was taken, for the degradation of the land itself, for the other resources that were taken from the land. I would think that we would want to start these hearings on a good footing by first of all totally rejecting H.R. 2246 and S. 885 as totally unacceptable to the heirs and to the allottees that we represent.

They have indicated to us that any legislation that does not provide for the restoration of lands and for damages in the form of money for the resources taken plus the economic hardship, would be totally unacceptable. However, it would seem before we can even do that, we have heard testimony from the geneologist who talked about the fact that the probates have not been done and will not be done for some time.

We talk about the fact that there might be about 100,000 acres of land. What we have to understand is that the Interior Department solicitors in Fort Snelling rejected 728 claims because they were not claims that fell in the category of 2415, but clearly these claims also had serious title defects. The assistant county attorney from Becker County also indicated that in their title searches they were finding many other parcels of land that had clouds on the title.

No doubt the first thing that has to take place is that there first of all has to be a complete investigation done, and I would think that the Department of the Interior ought to consider first of all a complete real estate audit on the reservation, as to what happened to the $90 million in trust funds that disappeared after the four northeastern townships were supposedly sold in 1889, and to first of all, get to the bottom of the problem, and to ascertain exactly to what extent other titles are cleared. At that point we could sit down and draft legislation that would have the support of the heirs, the allottees, tribal government, and hopefully would have the support of the affected current property holders.

I would also like to introduce into the record a copy of one of our newspapers which gives a whole historical perspective on how we arrived here.[1] It breaks down the categories of the different types of areas of clouded titles.

Mr. ALEXANDER. It will be made a part of the record.

Mr. BELLECOURT. I thank you very much for this opportunity.

Mr. ALEXANDER. Thank you. Let me just make sure that I understand what you have said, so that the record is clear on this. Is it your position that what you would like to see is the land returned to the heirs of the individual allottees, or those people who still are alive, plus monetary damages?

Mr. BELLECOURT. Exactly.

Mr. ALEXANDER. Do you believe that the tribe, as a political entity, has any interest in a potential settlement?

Mr. BELLECOURT. Yes, I do, and I should have touched on that. We have to understand that there is a very unwieldy, difficult situation with the fractionated heirship, which is becoming more fractionated as the genealogists conduct their investigations. Before 1889 we did not have this problem because land was held in common by the tribe.

Mr. ALEXANDER. Right.

Mr. BELLECOURT. We feel, and in talking to some of the heirs and some of the allottees, they feel that they should be paid for their land, but the land then be restored to trust and managed by the elected tribal government entity for the benefit of all tribal members and guests that come into our reservation.

Mr. ALEXANDER. Just for our own purposes, so that the record is clear, could you tell me how many allottees or heirs your organization, since it has been in existence, has been able to contact in this effort?

Mr. BELLECOURT. We have been in contact with many. I cannot give you an exact figure on that. As has been indicated at these hearings, many of our people are just beginning to realize the scope of this problem and how it directly affects them.

Mr. ALEXANDER. One of the problems the Department of the Interior indicated is, that it would be very difficult, and therefore very costly, to track down the heirs and the allottees. Therefore, what I am really asking you is to get some sense as to whether that is true or not. If you could provide us with a specific number for the record when you submit your prepared statement, I would be delighted to receive it.

Mr. BELLECOURT. I will, Mr. Chairman. If I could just comment further, I think the problem that presents itself here is that because of the loss of land base by this fraud and this swindle that took place many of our people have been forced to leave the reservation and go out into the world and try to make a living for themselves. It is for that reason that people have been dispersed.

I guess in closing, in terms of my comments, I would like to say that it just seems to me that when you look back and see what the Nelson Act did, and Senator Moses Clapp, who was a lobbyist for the timber companies who put the Moses Clapp amendment on the appropriations bill, and what Steenerson did, it seems to me that the approach that is taken by both Congressman Stangeland and Senators Durenberger and Boschwitz is really sort of a reincarnation of Moses Clapp, and that they are just trying to put the finishing touches and to get this behind them.

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[1] Retained in committee files.

I guess I will say this, that regardless of whatever bill the Senate or the Congress of the United States should pass, if it has not got the support of the people at White Earth, then nothing has been resolved but to cause more animosity and antagonism. In that case, what is going to change in terms of real estate values and the social, economic, and political climate in that area? Therefore, I think that they have to look at this in a much more realistic fashion in terms of any kind of solution.

Mr. **Alexander**. Thank you very much.

Mr. **Bellecourt**. Thank you, sir.

Mr. **Alexander**. For our finale today, we would like to have Lorraine Bruns, Joy Viker, and Melvin Schaumberg. If I mispronounced anybody's name, let me apologize in advance. We were here late last night. Thank you for coming.

We could start with Lorraine Bruns, if you will. Introduce yourself and any organization you may represent.

STATEMENT OF MS. LORRAINE C. BRUNS, VICE PRESIDENT, ITASCA WEST RECREATIONAL AREA, WAUBUN, MN

Ms. **Bruns**. Thank you, Mr. Chairman and committee members. We do not have any committee members.

I am Lori Bruns, from the Itasca West Recreational Area, which is a resort association and associated businesses on the reservation.

The Nelson Act of 1889 opened the surplus lands on the White Earth Reservation to non-Indians. Lands could be obtained by land auction, private sales, or homestead. At this time the Federal Government encouraged non-Indian settlers to this area.

Present landowners are innocent victims of circumstances created by policies made and changed over the years according to the political temperature. These landowners are impotent, caught between policies changing around them, sometimes doing irreparable damage.

The resorts and businesses should have a right to operate the same as any other business in the State or country. If we want to improve or expand, we should be able to do this. Would it be prudent, under the present circumstances, to invest more money and effort into our businesses when we are under clouded titles and uncertain ownership? This is not a privilege under our system of free enterprise—it is a right. Many of our business owners have applied for loans for expansion and development in spite of this dilemma, and been refused because the business was located on the reservation.

Property taxes have continued to accelerate, in line with other Minnesota business properties off the reservation. Evaluation of our property rises with the tide, yet our marketability has decreased. The bottom has dropped out of the business community on the reservation. The stigma of land claims affects all property. It is difficult to sell but impossible to get a fair market value.

We support this legislative solution to the land claims issue. Litigation would simply bankrupt the economy. Individuals purchased their lands in good faith, receiving clear title, and should not be expected to bear this financial burden that court cases would involve. No one here today has the time or money to fight this battle, nor should they have to endure it.

It is not practical to expand or improve. We cannot borrow money. Taxes continue to rise, market values to fall. The business climate of the past few years has created enough uncertainty without this undeserved added stress. Members of our business community that would like to sell and retire are unable to. People with health problems are forced to continue working. People with family or personal problems are not able to relocate as they wish. Irregardless of the reason for wishing to make a change, we do not have the freedom to do so.

This country was founded on dreams—dreams of religious freedom, dreams of financial success, dreams of a better life. We have lost our right to dream, our initiative to dream, our dreams of the future.

Mr. Chairman, I have written testimony from other business members, and I would like permission to submit it.

Mr. **Alexander**. Fine. We will accept it for the record.

Ms. **Bruns**. I also would like to insert here that many of our business owners on the reservation are Indian people. Some are members of the Band; some are not. Their lands also have clouded titles on them, so they are in the same situation as the nontribal member.

Thank you for allowing me to testify.

Mr. **Alexander**. Thank you. After we go through the panel, I might have one or two questions for you at the end. Thank you.

[The attachments follow. Testimony resumes on p. 197.]

Nov 12, 1985

House of Representatives Select Committee on
Indian Affairs
Chairman Honorable Morris K. Udall
1324 Longworth House Office Building
Washington, DC 20515

Dear Chairman Udall:

Re: November 16, 1985 Committee Hearings HR 2246

The land claim issue has completely changed our family plans.

In 1973 we purchased our small resort and proceeded to develope the home and re-establish the business. In 1975, my husband retired from the U.S.A.F. It was our intention to expand the resort and to develope a steady business to add to his retirement income.

In 1976 the courts reestablished the White Earth Indian Reservation to the original boundaries. All of the sudden we are residents of an Indian Reservation. Nothing seemed to change until we approached the banks in the area (100 miles around) for a loan to develope the business. Eventhough we had an established income, excellent credit references, money was unavailable "until the reservation situation is clarified".

In March 1980 we were notified that a 40 acre parcel we purchased, as part of the resort, was part of the "Land Claims" problem. The 18 year old mixed-blood Indian woman received $2,325 for this land in May 1917, in 1973 we paid $500 for the same parcel! Certainly $500 isn't much to lose, compared to the many parcels of much more value that have claims against them. However, with the land claims issue many problems have erupted.

As a citizen of the United States of America it is impossible for me to understand: a judge could reestablish the boundaries of a former reservation; the Indians who have received money, goods and services from the U.S. government, are establishing their own "government" paid for by my government; now they want to govern me with rules regarding building codes, law-enforcement, hunting and fishing, etc.; as well as sue me for land they claim should not have been sold and I have the privilege of paying for the defense and prosecution!!

Congress must settle the matter of land claims. Congress is responsible for treaties with Indians and is responsible for settling the problem that it has created.

Sincerely,

Shirley A. Conley

UNITED
REALTY INC.
(218)-847-2691
119 Pioneer Street
Detroit Lakes, MN 56501

November 10, 1983

To Whom it May Concern:

In the last several years we are finding it increasingly difficult to sell a piece of property within the boundries of the White Earth Indian Reservation.

This is causing considerable problems for some people who need to sell, but can not sell on a Contract for Deed.

Today, Savings and Loans and Banks sell most of their mortgages on the secondary mortgage market. In order to do this Title Insurance is necessary and we are finding it almost impossible to get this insurance. Therefore the mortgages are not marketable and in most cases the loan is not made.

Anything that can be done to clear up these title problems will be greatly appreciated by all realtors, but most important, this would be appreciated by the many people who have property for sale.

Thank you very much.

Leo Silertson
Broker
1ST UNITED REALTY, INC.

LE/cf

Run-Way-Bewin Lodge

KRUSES' HIDE-AWAY RESORT
WHITE EARTH LAKE
WAUBUN, MINNESOTA 56589
Phone:
218-473-2138 or 218-473-2139

Nov-13, 1983

Gentlemen:

We bought our property in good-faith in 1973. These problems of land claims of lands of non Indians on reservation lands were non-existant at that time.

These uncertainties have caused much frustration and mental anguish.

The Indian land Claims cloud our titles; devaluating our land and business.

We have reached the time of retirement, hoping for a profit to provide for our future, and a satisfaction of a few years of health and happiness.

Without legislation on the land claims we live with stress and fear of loosing our property, and business. We have worked so diligently.

We are tax paying citizens without equality
Isn't this on which our Country was founded?
We feel this is an act of discrimination!

Your support is urgently needed for a solution to this complex problem by supporting Bill S-885.

Since tourism is the second most important industry in our state this is an important issue
Your concern and help will be greatly appreciated
Thank you - yours truly - Ed and Ruth Kruse

Vacation
PLANS
BEGIN HERE.

Jolly Fisherman Resort
Waubun, Minnesota 56589
Telephone 218-734-2262

November 12, 1983

House Interior and Insular Affairs Committee
Honorable Morris K. Udall, Chairman
1324 Longworth House Office Bldg.
Washington, D. C. 20515

Dear Representative Udall,

This letter is written out of deep concern for our prpperty and livihood here on White Earth Reservation.

We bought our resort in 1975 with a clear title and no reason to suspect it would ever be otherwise. Since then we have worked hard to improve our property and enhance our business.

We've recently been informed that we have a potential 2415 claim against our land along with a list of "potential heirs to your property."

Besides the obvious stress caused by this situation, we are suspended in a state of limbo as far as our actual business is concerned. We are afraid to commit more money to further improvements and yet we can't sell, except possibly if we're willing to take a tremendous loss.

Our rights as United States citizens to free enterprise and the pursuit there of have somewhere been violated. It is time to face the damage done to its citizens by a government that has made and changed numerous treaties, Acts of Congress, laws, etc. pertaining to reservation lands.

We are in favor of HR 2246 presented by Rep. Stangeland.

Since individual court cases would be both unfair to present owners and far too costly, we feel it is the only fair and reasonable means open to us to address the land claims problems here on White Earth.

Sincerely,
John & Jane Reish
John and Jane Reish

2 Miles South of Highway 113 in the White Earth State Forest.

Senate Land Claims Hearings, November 17, 1983
House Land Claims Hearings, November 16, 1983

Testimony For Land Claims Hearings
Senate Select Committee Of Indian Affairs
Chairman, Senator Mark Andrews

Gentlemen,

The issue today is land claims! Where do we start? We feel up to now very little or nothing has been done to solve these problems. These problems have been with us entirely to long! The land claim issue is like a fever, feelings run high, then low, depending on what one reads, when he or she picks up the newspaper. I honestly believe hardly a week passes when we don't hear or read about this issue. As of now I have no land claims against my land. Most of my neighbors do have land claims. Folks here are expected to pay taxes each year. Many would like to make improvements. Some are ready to retire. They would like to have sons, and/or daughters and sons-in-law take over. If the children plan to improve, they will look a long time for financing under present conditions. The "For Sale" signs in the lake region have doubled in the past few years. If the children decide to sell, who will they sell to with the problems we are faced with? People come here to invest in land; their interset is short lived when they learn of the problems we are facing. Who wants to invest when they know the titles are questionable?

This issue has created a sore spot among the people. We are working hard for harmony. There are people who wish to devide us. I can say only: "Be they Indian or Non-Indian we will not let this happen.

How to solve land claims? Everyone I know bought their land in good faith. We know there are many legal aspects involved. I am sure how ever it is settled there will be some unhappy people. It is unfortunate that your former colleague of years gone by did such a lousy job (If you will pardon my language) in the matter of Indian Affairs.

The human element here is very important! It is now in your hands, I hope and pray that what ever your decision it will be fair, firm and final!

Respectfully yours,

Jerry Ingebrigtson

Jerry Ingebrigston
Rt. #1
Waubun, MN 56589

Waubun, MN 56589

Nov. 14, 1983

Senator Mark Andrews
and
Senate Select Committee of Indian Affairs

Washinton, D.C.

Gentlemen:

Many people in our area are experiencing undo stress and pain because of the uncertainty of ownership caused by Indian claims to all or a part of their acreages.

These Indian claims have surfaced years after these people bought the property with purported clear titles.

They are unable to obtain loans to better their circumstances as to housing or business; nor, are they able to sell, which is causing undo hardship to those with the "Clouded Titles".

I feel a solution should be brought about without any more lapse of time in order to alleviate the hardship, animosity and suspicion which has arisen on this Open Reservation.

Thank you kindly for your time and consideration in this matter.

Respectfully yours,

Evelyn Swift (Mrs.)
R2 Snider Lake Road
Waubun, MN 56589

Waubun Mn

Hon. Senator Mark andrews:
Senate Committee on Indian
affairs:
Dear Sir:

As a land owner on the White Earth Reservation I am deeply concerned about the land Claims issue.
I hope something can be done to get this issue settled.
I dont want to lose my land to the Indians

Thank you

Raymond Bogrud
Waubun Mn
56589

Waubun, Minn
Nov 14, 1983

Dear Sir:

I have 120 acres with clouded titles. I bought this land about 35 years ago in good faith. The land has lost its value because of this — probably nobody would even buy it under the circumstances. I feel that this problem should be solved at the government level very soon and not let it hanging in "mid-air."

Sincerely,
Orrin Borgrud
Waubun, Minn.
56589

J. & B. RANCH
James and Bobette
RT. 2, BOX 110 / WAUBUN, MINN. 56589 / 218-473-2645
POLLED HEREFORDS

Dear Senator Andrews

This letter pertains to my farm property in Oakland Township of Mahnomen County in Minnesota. I farm 160 acres in which 40 has a cloudy title.

Thiss farm has Been in the Benson family for about 50 years. When the property value is down and your not sure 40 acres is yours. After all this time. Its pretty depressing.

We hope your senate select committee can solve these problem.

thank You James Benson

Senator Mark Andrews
Senate Select Comm of Indian affairs

We are concerned residents that have land here in Minnesota on the White Earth Reservation who own land that has clouded titles. We are concerned over the Indian land claims.

We have owned a business for the past 25 years and would like to sell but because of the land claims ono one wants to venture into buying a good business because they may not be able to get clear title. Why should we be victims of something our government let the mixed bloods do when they opened this reservation so that the Indians could sell their land which they did for a price that was good enough at that time and now want a settlement for todays prices. Years ago this was government land so there should of not been tax on tribal lands but State put tax on Indian parcels and when they couldn't pay their taxes in the hard times in the late twenties and thirtys they lost their land for taxes then in some cases none indians bought it for back taxes. Also in cases of indian families who passed on and never had any probate done the heirs were never contacted so they went for back taxes and was bought by none indians and indians. Now there is clouded titles on private owned indian and none indian lands which is not fair to either side, we bought and paid diarly for our land. Why should we now be obligated to settle something that was done years ago.

I would like to see some one like yourself and some of our other politicians do something to settlement without selling us down the line. This has been going on for several years and we don't have a politician with the ability to stand up for the land owners on these lands.

Put yourself in our position and tell all our other congressmen and legislators they should live here for a while and they would change their feelings about the land issues on this reservation.

Please think about this and do something please!

Sincerely John + Darlene Bartos

Mr. **Alexander**. Joy Viker.

STATEMENT OF MS. JOY VIKER, WHITE EARTH EQUAL RIGHTS COMMISSION, MAHNOMEN, MN

Ms. **Viker**. Thank you. My name is Joy Viker. I am a resident of Mahnomen County, MN, which is located entirely within the boundaries of the White Earth Reservation. My husband and I purchased 320 acres of land in 1964 in Mahnomen County, and received a title based on what was understood to be the law at the time. Now, nearly 20 years later, we find we have 160 acres of that land with a questionable title.

If this has to be settled through a court action, it would be a very expensive proposition for us. If the Federal Government or the heirs initiate court action, it would be impossible for any individual to handle the expense because the court costs could amount to hundreds of thousands of dollars if the case went as far as the U.S. Supreme Court.

This is the problem we face, and there are many people in the area who face this same type of problem. Because of the investigation of these titles, any past owner of a parcel with a questionable title and the present owner of this land all face great financial loss if there is court action. Some Indian landowners as well as non-Indian owners face these title claims, and whether this land was purchased 10 years ago, 20 years ago as in my case, 50 years ago or longer, each parcel was purchased according to the law at the time and each person was told he or she had a clear title.

Those of us who live on White Earth Reservation have more problems than clouded titles. Because of this situation, those applying for loans have great difficulty in borrowing money when using their property for collateral. In many cases people have been refused loans. Some people have had trouble getting credit, and many have been rejected when applying for title insurance on their property. In general, no one knows where they stand, and this is a cause for great concern.

The cause of our problem lies with the Federal Government and the solution lies with the Federal Government. Without Congress taking action, we cannot hope to resolve these problems. If these problems are not solved quickly, it could very possibly lead to the economic and social downfall of this area because time has a habit of compounding problems.

The U.S. Government has the duty to discover all legal claims on behalf of the Indian people, but they also have the responsibility for all people who live in the community who, through no fault of their own, find themselves in a situation where the land on which they reside and make their living places their entire way of life in jeopardy. Our problems can only be solved through legislation, and we need a final and just settlement. I support this bill and ask this committee to carefully consider this legislation.

Thank you.

Mr. **Alexander**. Mr. Schaumberg.

STATEMENT OF MELVIN SCHAUMBERG, FARMER, MAHNOMEN, MN

Mr. **Schaumberg**. Mr. Chairman, I am Melvin Schaumberg, a farmer on White Earth Reservation. I have a land claim against part of my farm. I cannot get a mortgage to make improvements on my land. My son would like to take over the farm, but he cannot get a loan to buy it. I am of retirement age. I would like to see my son take over the farm, but cannot burden my son or anyone else with the possibility of court action against them due to land claims.

On the open market, the price is approximately half the price of land without a claim against it, and people won't even consider buying it. I have paid taxes on this land for over 30 years. If court action is started against me, it will cost more than the value of the land that is under question. I have spent over 30 years building equity in my entire farm. The expense of court action would place myself and my wife in a bankrupt condition.

Farmers I know have been refused title insurance on White Earth Reservation, insurance that would protect both buyers and sellers. I have letters with me from individuals from the farming community who have requested these letters be submitted for written testimony, and they have been accepted.

Mr. **Alexander**. They will be made part of the record, yes.

Mr. **Schaumberg**. Attached to the copy of my testimony is a letter from Edward Hodgson. I will read this letter at this time.

> **Dear Senator Andrews**. In 1975, we purchased farmland in the Callaway area of Becker County. We were given a clear title to our land at that time.
>
> In the next 4 years, land values increased. We decided to use our equity to update our machinery so we could do a better job of farming. In the fall of 1981 when interest rates were high, I went to the Federal Land Bank and requested a loan to take care of short-term borrowing and to pay for that machinery which I had bought. This is where we found out we had a land claim problem.
>
> We had an abundant amount of equity. My accountant and I had put together a cash flow program to adequately handle the loan. At the time we received the attached letter along with the Federal Land Bank lawyer's opinion. This stopped my loan, leaving me caught up with a large short-term debt and a high interest rate at the bank.
>
> The following spring, I was forced to quit farming because I could not get operating money to put the crop in. Since then, I have tried to sell the farm. That won't work either. People who are interested can't borrow money to buy it because of land claim problems.
>
> I put an ad in the paper offering to trade the farm for a resort or a business. I received a call from a party in Wisconsin. The first question they had was, "Is it on the reservation?" They had heard of the land claim problems and wanted no part of it.
>
> In summary, everything we have is tied up in something we cannot sell or borrow on. We both work just to be able to live and try to keep up with the high interest on our short-term borrowing at the bank. We don't know how much longer we can hang on this way. We are deprived of long-term borrowing privileges other farmers have who do not have land claims on their land.
>
> This has caused us many sleepless nights and much emotional stress. Senator Andrews, we desperately need your help. Thanking you in advance, we are, Phyllis Hodgson, Edward Hodgson.

I will read the last paragraph of the rejection by the Federal Land Bank to the Hodgsons' request for a loan:

> We are fully aware of your overleveraged financial position, but will expect your December 1, 1981 installment to be paid. It will take $10,893.42 on or before Decem-

ber 30, 1981 to get your loan in a current position. If this is not possible, please stop in and make the necessary arrangements with our office.

These examples show the problems and how they place financial burdens and emotional stress on farmers. The people I have talked to favor legislation to solve these problems.

I want to thank you for allowing me to testify at these hearings, and am willing to try to answer any questions you may have.

[The attachments follow. Testimony resumes on p. 216.]

Federal Land Bank Association
of Detroit Lakes

wy. 10 East
ox 460
etroit Lakes, Minnesota 56501
elephone (218) 847-4175

December 18, 1981

Edward K. Hodgson
Route # 1
Callaway, MN 56521

Dear Mr. Hodgson:

I regret to inform you that the Federal Land Bank is unable to assist you with financing at this time. Attached is a copy of our attorney's opinion regarding potential Indian claims. There are only 80 acres free of potential Indian claims and they have no legal access. Therefore, we cannot increase the loan amount because of the lack of security.

We are fully aware of your overleveraged financial position, but still expect your December 1, 1981 installment to be paid. It will take $10,893.42 on or before December 30, 1981 to get your loan in a current position. If this is not possible, please stop in and make the necessary arrangements with our office.

Sincerely,

Steven D McLaen

Steven D. McLaen
Loan Officer

SDM:cb

P.S. Also enclosed are your 1980 income tax returns for your safe keeping, and a photocopy of a memo from our Federal Land Bank attorney.

The Federal Land Bank of Saint Paul

Memorandum to: Steven D. McLaen, Loan Officer

From: Dick Butala, Attorney, Loan Closing Services DB.

Date: December 11, 1981

Subject: Edward K. Hodgson Loan No. 396511-4-0 0-020

In our opinion the NE¼NW¼ and SW¼NE¼, Sec. 17-141-41 (Abstract B) are free from potential Indian claims. The SE¼NW¼, SW¼NE¼ and E½SW¼, Sec. 17-141-41 (Abstract A) are subject to potential Indian claims and are unacceptable as security for an FLB loan.

bt
encs. - 2 absts

Contact - The Minnesota Chippewa Tribe
P.O. Box 217
Cass Lake, Minn. 56633
[illegible] - Pres

Phone - 335-2252

Committee of Indian Affairs

We have seen our land depreciate in value from $1500 per acre to a big 0. This problem is caused by the Indian title land in question. We cant borrow on this land to help finance off the reservation land. We dare not improve it. Meaning; clean-out existing ditches, build farm buildings or homes, why even use improved farming methods that are time consuming and costly if we aren't sure its ours. We need more land for our growing family but its useless, Federal Land Bank says our land is not morgageable. We can't sell land in question - whose going to buy a faulty title? The constant worry over the financial aspect plus the time involved with meetings is an ever growing concern to my family. Will my sons be able to farm their heritage?

William Zurn

over

RR #1 Box 99 Callaway, Mn. 56521

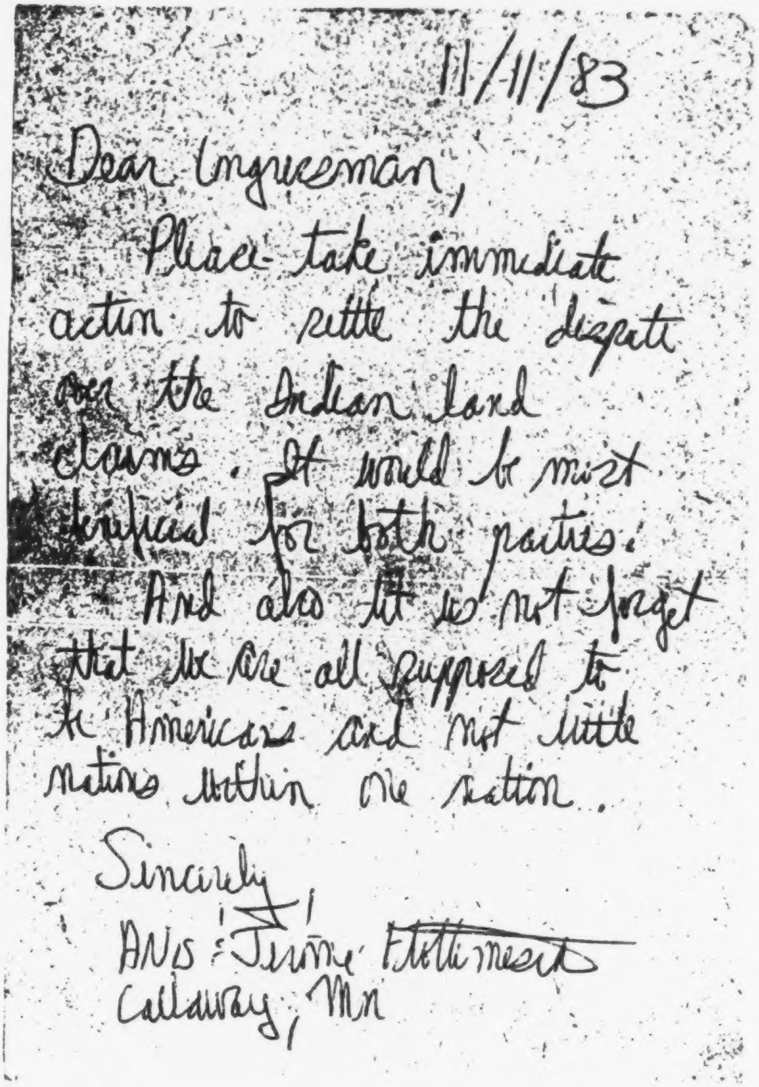
In trying to reinstate our land value we spent excess time and money, working with lawyers to clear our titles. (All in Vain-

We even tried to sell to Fish & Wild life Department. They wouldn't touch it, Where is our government offices when we need them?

Thank-You

We pay taxes on this land and can't even sell or borrow money on it, our home 80 acres is the land that is indian land Sec 24 Riceville twp. And back forty is indian land too.

Nick J Schonzelle
Callaway Mn



11/11/83

Dear Congressman,

Please take immediate action to settle the dispute over the Indian land claims. It would be most beneficial for both parties.

And also let us not forget that we are all supposed to be Americans and not little nations within one nation.

Sincerely,

Ann & Jimmie Flottemesch
Callaway, Mn

Dear Senator,

In the early 1900s the reservation opened, with a promise of reasonable land prices, and a chance to improve ones state in life. Many of our grandfathers and great grandfathers responded and settled this land. With their and our sweat and blood we improved it to the [illegible] area which today we call our home. We have raised our families payed our taxes.

to the various governments to also help improve this area.

Today Sir, we need your help to protect us and our property we have worked so hard for.

As a young farmer it is hard enough to make a go into today's economy, but with the mortgageability problems brought forth with unclear titles it increases our hardship.

Please Sir do all you can so our hard work will not be taken from us.

Richard Stutesman

Callaway, Minnesota
November 10, 1983

Senate Select Com. on Indian Affairs
Chairman Senator Mark Andrews
Senate HART - 838
Washington, D.C. - 20570

Gentlemen:

I am writing to solicit your help in our struggle with the so-called "Indian land claims."

My husband and I have farmed for forty-two years. We worked hard and long as did our children. We have seven children. There have been no eight hour days for us.

Now that we are of the age to retire we would like to sell our land to our children. However this is not possible as money can not be borrowed on this land. No one will lend money on nor buy this land that has no "clear title."

Due to this 'title' problem the land has decreased in value.

What shall we do? Our sons would want to farm. Should they also join the ranks of the welfare recipients? Who will pay the taxes to support a welfare nation?

Thank you for your consideration. We hope this matter can be resolved very soon.

Respectfully,
Mr. & Mrs. Laurence Zurn

My husband is also a veteran of World War II.

11-11-83

Senate Select Committee
on Indian Affairs
Chairman Senator Mark Andrews
Senate Hart 838
Washington D.C. 20510

Dear Senator Andrews.

Please help us pass legislation that will end the land Claim Dispute on the White Earth Indian Reservation.

As a younger farmer it puts a great burden on us when we come to borrowing against our property or selling our land.

Yours truly
Bonnie Osten
R#1- Box 95
Callaway
Minn
56521

November 10, 83

Chairman Mark Andrews.

Dear Sir,

I'm writing in concern of the Indian Land Claims. I have been farming for a few years and need to borrow money for equipment and such. I've tried Federal Land Bank and Production Credit Association but to no avail. They will not borrow any money on my land because I have no clear title. Am I to lose my land and living because of this nonsense? Please, we need help & we need it now!

Yours sincerely,

Anthony N. [illegible]

11-11-83

Senate Select Committee
on Indian Affairs
Chairman Senator Mark Andrews
Senate Hart 838
Washington D.C. 20510

Dear Senator Andrews,

Please help us pass legislation that will end the land claims dispute on the White Earth Indian Reservation.

As a younger farmer it puts a great burden on us when we come to borrowing against our property or selling our land.

Yours truly,
Wilhelm K. Watcher

R#1 - Box 96
Callaway
Minn. 56521

Senate Select Committee
on Indian Affairs
Chairman Senator Mark Andrews
Senate Harte 838
Washington, D.C. 20510

Dear Senator Mark Andrews,
RE: Nov 17, 1983 Hearing on 5885

I am writing you about a matter that concerns me and my family deeply. We are one of the familys living on the White Earth Indian Reservation who cannot get a clear land titles. We have 240 acres of land that has clouded titles. We can not develop, sell or mortage this land.

Why should we a people living in a free country be forced into a situation like this! It is not fair! I feel that our rights are being denied ess. I also feel we should have some legislatoon passed to solve this problem.

Sincerely Yours,
Patty Maruska
R#1
Lengby, Mn
56651

11-11-83

Senate Select Committee
on Indian Affairs
Chairman Senator Mark Andrews
Senate Hart 838
Washington D.C., 20510

Dear Senator Andrews,

Please help us pass legislation that will end the land claims dispute on the White Earth Indian Reservation.

As a younger farmer it puts a great burden on us when we come to borrowing against our property or selling our land.

Yours truly
Lyle Oster
Callaway
Mnn. 56521
R#1- Box 95

November 9, 1983

Chairman Mark Andrews,

Dear Sir,

I would like to let you know my problem. I wouldn't have a problem except I do now because of the Indian Land Claims. I'm now living in North Dakota, recently married and had planned to buy a house in Valley City but I can't borrow any money against my land in Minnesota. I can't sell it for a reasonable price all because of I haven't a clear title according to FLB & PCA. I'm not making any money renting it & I can't do anything with it but pay the huge taxes. This situation is uncalled for & stupid. Please help me and the farmers on the reservation.

Sincerely yours,
Althea Born
Carrington, N.D.

November 11, 1983

Dear Congressman, Mark Andrews:

I am addressing a problem, of paramount importance to me, which we are having on the White Earth Indian Reservation. I hope that you and your constituents can, through legislation, resolve this problem.

I would like you to settle the land claims related to Indian Lands on the White Earth Indian Reservation and very important to remove the clouds from these lands and all land on the reservation. As now it puts on due stress on the land owners the townships and county within the reservation boundaries.

Sincerely,

James Matter

Mr. **Alexander**. Thank you all.

I just have two questions for everybody. The first one is, what have your title insurance companies—and I assume all of you have title insurance, you bought 20 years ago——

Ms. **Bruns**. No.

Ms. **Viker**. No.

Mr. **Alexander**. Title insurance was not common in the White Earth area for land transactions 10 years ago, 5 years ago?

Ms. **Bruns**. I have a letter in my testimony from a realtor, and he explains something in there about title insurance, a handwritten letter.

Mr. **Alexander**. Fine, but has that not been a common practice in the last decade or two?

Ms. **Bruns**. No, it has not.

Mr. **Alexander**. Therefore, your land was purchased, all three of you, without title insurance when it was originally purchased?

Ms. **Bruns**. That is right. Title insurance is not acceptable or is not——

Mr. **Alexander**. I know it will not be issued now, but you bought your land 20 years ago, Ms. Viker.

Ms. **Viker**. No. Ours was purchased with an abstract only, and a legal opinion was done by an attorney. That is how it is usually done, and the title was clear, according to the law at the time.

Mr. **Alexander**. Do any of you have any problems with a solution to this situation that would involve providing a land base to either the individual allottees or the tribe or some combination thereof?

Ms. **Bruns**. I would think that if there was an exchange, the exchange would have to go to the allottee to ensure his constitutional right to that land, and not take his constitutional rights away. That is what happened the first time, and it cannot happen again.

However, in order to completely clear the titles, tribal rights can only be exercised on tribal and trust lands.

Mr. **Schaumberg**. Well, if you have a land exchange I would say that it should be in a block form, not to checkerboard the reservation, because that would put us under jurisdiction of the Tribe.

Mr. **Alexander**. Thank you. I thank you for making this long trip and being patient with us this morning.

Ms. **Viker**. Thank you.

Ms. **Bruns**. Thank you, Paul.

Mr. **Alexander**. The hearing is adjourned.

[Whereupon, at 12:45 p.m., the hearing was adjourned.]

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